TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 186, 183.

JOHN W. ARNOLD, PLAINTIFF IN ERROR,

vs.

LEWIS HATCH.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED JANUARY 7, 1899.

(17,251.)

10201

(17,251.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 666.

JOHN W. ARNOLD, PLAINTIFF IN ERROR,

vs.

LEWIS HATCH.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1897.

No. 540.

JOHN W. ARNOLD,
Plaintiff in Error,

vs.

LEWIS HATCH,
Defendant in Error.

Mr. KENESAW M. LANDIS,
Counsel for Plaintiff in Error.

Mr. GEORGE A. DUPUY,
Counsel for Defendant in Error.

In Error to the District Court of the United States for the Northern District of Illinois.

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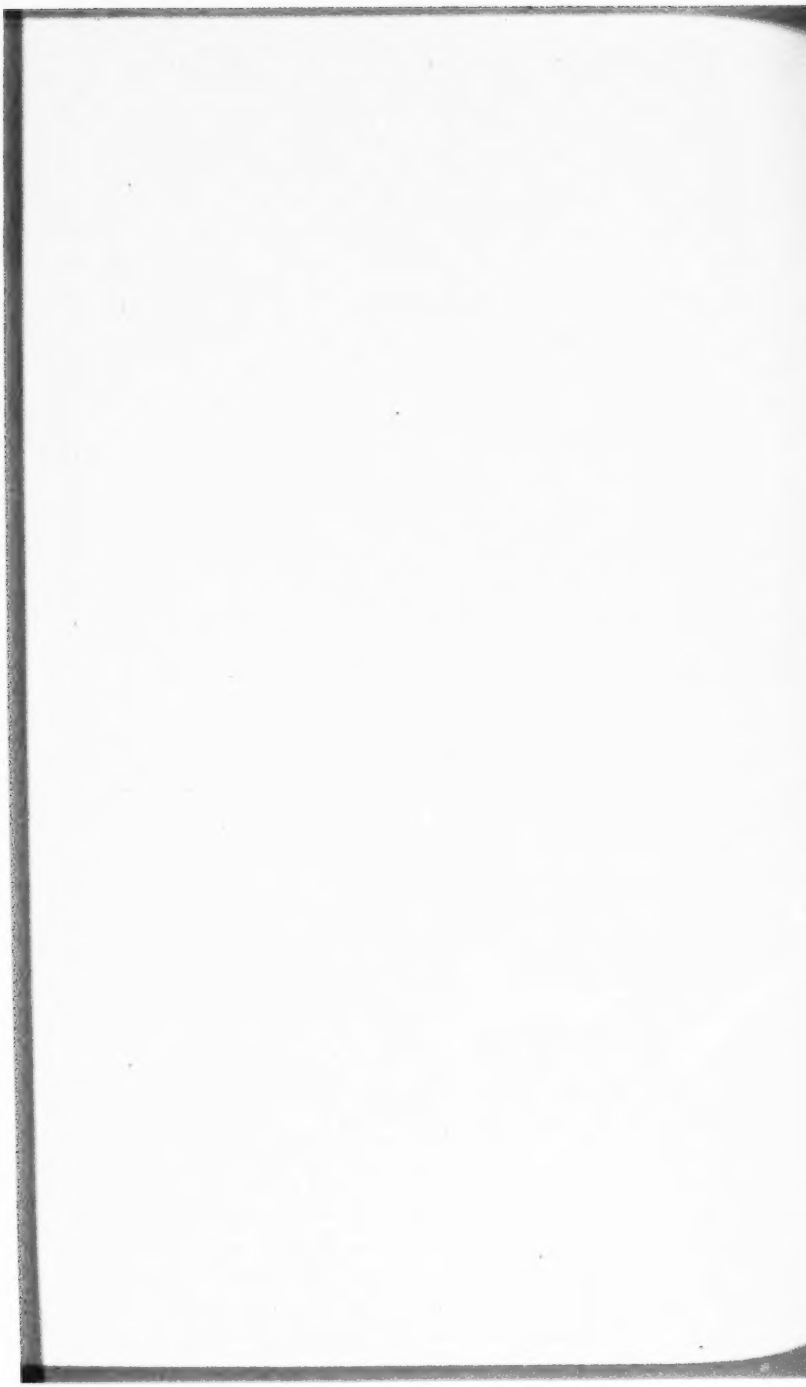

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1 PLEAS had at a regular term of the District Court of the United States of America for the Northern Division of the Northern District of Illinois, begun and held in the United States Court rooms in the City of Chicago, in said division of said district, on the third Monday of December, it being the twentieth day thereof, in the year of our Lord one thousand, eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-second year. Pleas

Present, the Hon. William J. Allen, Judge of the District Court of the United States for the Southern District of Illinois sitting in this Court by designation, John C. Ames, United States Marshal for said District, and T. C. MacMillan, clerk of said court.

Joseph G. Heim, Receiver of
The First National Bank of South Bend
vs.
Frank W. Hatch. } *9085.*

Be it remembered that heretofore, to wit, on the 28th day of May, A. D. 1897, there was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois a Præcipe for Summons, which said Præcipe is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.

IN THE DISTRICT COURT IN AND FOR SAID DISTRICT AND DIVISION.

July Term, 1897.

Præcipes for Summo

2 Joseph G. Heim as Receiver of
The First National Bank of South Bend,
vs.
F. W. Hatch. } *Assumpsit.* $500000.

The Clerk of said Court will issue a summons in said cause to said Defendant in a plea of trespass on the case on promises to the damage of said Plaintiff of five thousand dollars, direct the same to

the United States Marshal for said District to execute and make it returnable to the July term of said Court, 1897.

Dated this 28th day of May, A. D. 1897.

KENESAW M. LANDIS,
Plaintiff's Attorney.

To T. C. MacMillan, Clerk of said Court:—

ENDORSED: No. 9085. District Court of the United States, Northern District of Illinois, Northern Division. Joseph G. Heim, Receiver, &c., *vs.* F. W. Hatch. Præcipe. Filed May 28th, 1897.
T. C. MACMILLAN, *Clerk.*
KENESAW M. LANDIS, *Pltf's. Atty.*

And afterwards, to wit: on the 28th day of May, A. D. 1897, a Summons was issued out of and under the seal of said Court, directed to the Marshal of the Northern District of Illinois, to serve, said Summons being in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES OF AMERICA, } ss.
NORTHERN DISTRICT OF ILLINOIS. }

The United States of America to the Marshal of the Northern District of Illinois—GREETING:

3 We command you to summon F. W. Hatch if found in your District, to be and appear before our Judge of the District Court of the United States for the Northern District of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the District aforesaid, on the first Monday of July next, to answer unto Joseph G. Heim as Receiver of The First National Bank of South Bend, of a plea of trespass on the case upon promises, to his damage, as he alleges, of Five Thousand Dollars, and have you then and there this writ.

Witness, The Hon. Peter S. Grosscup, Judge of the District Court of the United States of America, at Chicago, aforesaid, this 28th day of May, in the year of our Lord one thousand eight hundred and ninety seven and of our Independence the 121st year.

T. C. MACMILLAN, *Clerk.*

ENDORSED: Gen. No. 9085. District Court of the United States, Northern District of Illinois. *Joseph G. Heim, Receiver,* v. *F. W. Hatch.* Summons returnable July Term, A. D. 1897.
T. C. MACMILLAN, *Clerk.*

Marshal's Re filed June 5

And afterwards, to-wit, on the 5th day of June, A. D. 1897, said Summons was returned and filed with the Marshal's return thereon endorsed in the words and figures following, to-wit:

I have served the within writ, by reading the same to and within the presence and hearing of F. W. Hatch therein named, on the 29th day of May, 1897.

JOHN W. ARNOLD, U. S. Marshal.
By John A. Logan, Deputy.

Marshal's Fees: 1 Service	2.00
Expenses in lieu of mileage	8.00
	$10.00

ENDORSED: Filed June 5th, A. D. 1897.
T. C. MACMILLAN, *Clerk*,
K. M. LANDIS, *Attorney.*

And afterwards, to-wit, on the 22nd day of June, A. D. 1897, the following order was had and entered of record in said cause before the Honorable Peter S. Grosscup, Judge, to-wit:

Joseph G. Heim, Receiver,
vs. } *9085.*
F. W. Hatch.

Order allowing plaintiff to amend præcipe and summons.

Comes the plaintiff by his Attorney and on his motion it is ordered by the Court that leave be given the plaintiff herein to amend the præcipe and summons in this cause by changing the form of action from an action of assumpsit to an action of debt.

4 And afterwards, to-wit, on the 24th day of June, A. D. 1897, came Joseph G. Heim as receiver of The First National Bank of South Bend, Plaintiff, by Kenesaw M. Landis, his attorney, and filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, his Declaration, which said Declaration is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

IN THE DISTRICT COURT FOR SAID DISTRICT AND DIVISION.
July Term, A. D. 1897.

Joseph G. Heim as receiver of
The First National Bank of South Bend,
vs.
F. W. Hatch. } *9085.*

n filed
1897.

Joseph G. Heim as receiver of The First National Bank of South Bend, Plaintiff, by Kenesaw M. Landis, his attorney, complains of F. W. Hatch, Defendant, of a plea that he render unto the plaintiff the sum of Four Thousand ($4,000) Dollars which he owes to and unjustly detains from said plaintiff.

For That Whereas heretofore on, to-wit, the 15th day of November, A. D. 1890, said The First National Bank of South Bend was organized as a National Banking association under the laws of the United States with a capital stock of Fifty Thousand ($50,000) Dollars, divided into Five hundred (500) shares of One Hundred ($100) Dollars each; and the Comptroller of the Currency of the United States did on, to-wit, the 15th day of November, A.
5 D. 1890, pursuant to law, give to said The First National Bank of South Bend a certificate under his hand and official seal, that said The First National Bank of South Bend had complied with all the provisions of law required to be complied with before commencing the business of banking, and that such association was authorized to commence the business of banking, and thereupon said The First National Bank of South Bend did commence the business of banking under and pursuant to the laws of the United States and did continue to carry on the business of banking under the laws of the United States until afterwards, to-wit, the 17th day of August, A. D. 1895.

And the plaintiff further avers that on, to-wit, the 17th day of August, A. D. 1895, said The First National Bank of South Bend, being then insolvent, suspended business and the payment of its obligations, and afterwards on, to-wit, the 17th day of August, A. D. 1895, the plaintiff was by the Comptroller of the Currency of the United States, in pursuance of the laws of the United States, duly appointed receiver of the said The First National Bank of South Bend and entered upon the discharge of his duties as such receiver.

And the plaintiff further avers thereafter and on, to-wit, the 17th day of August, A. D. 1896, it appeared to the satisfaction of the Comptroller of the Currency of the United States that in order

to pay the debt of said The First National Bank of South Bend it was necessary to enforce the individual liability of the stock holders thereof as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States to the extent of One Hundred
6 ($100) Dollars upon each and every share of the capital stock of said the First National Bank of South Bend held or owned by them at the time of the failure of said banking association as aforesaid, and thereupon the Comptroller of the Currency of the United States did on, to-wit, the 17th day of August, A. D. 1896, make an assessment and requisition upon the shareholders of the said The First National Bank of South Bend for Fifty Thousand ($50,000) Dollars to be paid by them ratably, on or before the 17th day of September, A. D. 1896, and did direct the plaintiff to take all necessary proceedings by suit or otherwise to enforce to that extent the said individual liability of the said stockholders.

Declara
June 7

And the plaintiff further avers that the defendant at the time said The First National Bank of South Bend suspended business and the payment of its obligations as aforesaid on, to-wit, the 17th day of August, A. D. 1895, was the owner and holder of forty (40) shares of the capital stock of said The First National Bank of South Bend, by means whereof and by force of the laws of the United States the defendant then and there became liable to the plaintiff to the amount of said assessment and requisition upon him as aforesaid, being the sum of Four Thousand ($4,000) Dollars, said amount being One Hundred Dollars ($100) upon each share of the capital stock of said The First National Bank of South Bend owned and held by said defendant at the time of said The First National Bank of South Bend suspended business and the payment of its obligations as aforesaid.

Yet, the defendant, though often requested, has not paid the
7 said sum of money, or any part thereof, to the plaintiff, but so to do wholly refuses, to the damage of the plaintiff of Five Thousand Dollars ($5,000), and he therefore brings his suit, etc.

KENESAW M. LANDIS,
Plaintiff's Attorney.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

Kenesaw M. Landis, being duly sworn on his oath deposes and says, that he is the attorney for the receiver of The First National Bank of South Bend, plaintiff in the above entitled cause; that the demand of the plaintiff is upon the cause of action set forth in the foregoing Declaration, and that there is due to the plaintiff, from the defendant, upon said cause of action after allowing the defendant

all his just credits, deductions and set-offs the sum of Forty-three Hundred Four and 65/100 Dollars ($4,304.65).

KENESAW M. LANDIS.

Subscribed and sworn to before me this 24th day of June, A. D. 1897.

C. R. PICKARD, *Deputy Clerk.*

ENDORSED: 9085. District Court U. S., *Joseph G. Heim* vs. *F. W. Hatch.* Declaration. Filed June 24th, 1897.

T. C. MACMILLAN,
Clerk.
KENESAW M. LANDIS,
Plff's. Atty.

And afterwards, to-wit, on the 20th day of July, A. D. 1897, the following order was had and entered of record in said cause before the Hon. Peter S. Grosscup, Judge, to-wit:

8

Joseph G. Heim as Receiver of
The First National Bank of South Bend
vs.
F. W. Hatch.
} *9085.*

Comes the plaintiff by his Attorney and W. F. Hatch the defendant herein being three times solemnly called in open Court comes not but makes default and it appearing to the Court that the summons that issued in this cause has been duly executed upon the said defendant, It is Ordered by the Court that the default of F. W. Hatch, the defendant herein, be and the same is hereby entered.

And afterwards, to-wit, on the 2nd day of August, A. D. 1897, the following order was had and entered of record in said cause before the Hon. William H. Seaman, Judge, presiding, to-wit:

Joseph G. Heim as Receiver of
The First National Bank of South Bend,
vs.
F. W. Hatch.
} *9085.*

Comes the plaintiff by his Attorney and asks leave of the Court to amend the præcipe, summons and Marshal's return thereon, and the pleadings herein by changing the name of the defendant from F. W. Hatch to Frank W. Hatch which leave is by the Court granted.

And afterwards, to-wit, on the 2nd day of August, A. D. 1897, the following order was had and entered of record in said cause before the Hon. William H. Seaman, Judge, to-wit:

Joseph G. Heim as Receiver of the First National Bank of South Bend,
vs.
Frank W. Hatch.
} *9085.*

This cause coming on to be heard and the said defendant, Frank W. Hatch, having been duly defaulted for his failure to put in an appearance herein, comes the said plaintiff by his Attorney and the Court having heard the evidence by the said plaintiff adduced, and argument of the said plaintiff's counsel, after due consideration, finds in favor of the plaintiff, and it is thereupon considered by the Court that the said Plaintiff, Joseph G. Heim, as Receiver of the First National Bank of South Bend, have and recover of the said defendant, Frank W. Hatch, the sum of Four Thousand dollars ($4,000.00) debt, and the further sum of Three Hundred Fifty-one and 09/100 dollars ($351.09) damages, besides the costs in this behalf expended, for which let execution issue. Judgment, 2, 1897.

9 And afterwards, to-wit, on the 13th day of August, A. D. 1897, a Præcipe for an Execution was filed in the Clerk's office of the United States District Court for the Northern District of Illinois, said Præcipe being in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.
} In the District Court within and for said District and Division.

Joseph G. Heim, Receiver of the First National Bank of South Bend *vs.* Frank W. Hatch. No. 9085. Præcipe for execution August 13.

The Clerk of said Court will issue a writ of *fiere facias* directed to the Marshal of said District, to execute against the property of the said defendant.

KENESAW M. LANDIS.
Attorney for Plaintiff.

To T. C. MACMILLAN, ESQ.,

ENDORSED: 9085. U. S. District Court Northern Division. Heim, Receiver, *vs.* F. W. Hatch, No. 9085. Præcipe for Execution. Filed Aug. 13, 1897. T. C. MacMillan, Clerk, Kenesaw M. Landis, Attorney for Plaintiff.

And afterwards, to-wit, on the 13th day of August, A. D. 1897, a *Fiere Facias* was issued out of and under the seal of said Court directed to the Marshal of the Northern District of Illinois to execute, said *Fiere Facias* being in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.

The United States of America, to the Marshal of the Northern District of Illinois—GREETING:

as
August

We command you, That of the goods and chattels, lands and
10 tenements of Frank W. Hatch, Defendant, in your District, you cause to be made the sum of Four thousand dollars, debt, three hundred fifty-one and 09/100 dollars, damages, and the further sum of thirty and 60/100 dollars, costs, which Joseph G. Heim, as Receiver of The First National Bank of South Bend, Plaintiff, lately, to-wit, on the 2nd day of August, A. D. 1897, in our District Court of the United States for the Northern District of Illinois, Northern Division, before the Judge thereof, at Chicago, in the District aforesaid, recovered against the said defendant, Frank W. Hatch, for damages which said Plaintiff had sustained, as well by occasion of the non-performance of certain promises and undertakings in that behalf, and for his costs and charges by him about his suit in this behalf expended, whereof said Defendant stands convicted, as appears to us of record.

And have you that money at the Clerk's office of our said Court, in ninety days from the date hereof, to render to the said Plaintiff for his damages and costs aforesaid. And have you also there this writ.

Witness, the Hon. Peter S. Grosscup, Judge of the District Court of the United States of America, at Chicago aforesaid, this 13th day of August, in the year of our Lord, one thousand eight hundred and ninety seven and of our Independence the one hundred and 22nd year.

T. C. MACMILLAN,
Clerk.

ENDORSED: 3650.

No. 9085. District Court, United States, Northern District of Illinois, Northern Division. Joseph G. Heim, Recr. *vs.* Frank W. Hatch. Fi. Fa. Debt, $4,000.00; Damages, $351.09; Costs,

$30.60; Judgment for $4,381.69. Judgment rendered Aug. 2nd, A. D. 1897.

T. C. MacMillan,
Clerk.

K. M. Landis,
Plaintiff's Atty.

11 Filed Nov. 11th, 1897. T. C. MacMillan, Clerk.

And afterwards, to wit, on the 1st day of September, A. D. 1897, the Petition of Lewis Hatch was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, said petition being in the words and figures following, to-wit:

In the United States District Court, Northern District of Illinois, Northern Division.

Joseph G. Heim, Receiver, etc.,
vs.
Frank W. Hatch.

To the Honorable, the Judge of said Court:

Petition filed Sept. 1897.

Your petitioner, Lewis Hatch, respectfully represents unto your Honors, that he now is and for more than fifty years last past has been a citizen and resident of McHenry County, in the State of Illinois; that during all said period he has been engaged in the occupation of farming in said county; that since about the year 1870 he has been the owner of and has since the year 1875 resided and now resides upon the farm formerly known as the "Hamilton Farm" and now known as the "Lewis Hatch Farm" in Township forty-six North, Range nine East of the 3rd Principal Meridian in said McHenry County; that he has owned all the farming machinery, implements, stock and crops on said farm since he has resided upon the same; that he is now the absolute and sole owner of the following described property situated upon such farm:

Six hundred sheep, more or less; 45 milch cows; 15 head of young stock; 20 horses; 4 stacks of oats; 150 tons of hay, more or less; 11 hogs; 2 mowers; 1 hay loader; 4 plows; 3 drags; 3 harrows; 1 seeder; 1 corn planter; 1 pulverizer; 1 roller; 1 tedder, and one hay fork and tackle.

12 Your petitioner further represents unto your Honors that on Saturday, August 21st, A. D. 1897, the said above described property was levied upon by one John A. Logan, as Deputy Marshal of this Court, by virtue of a writ of execution, dated August 13, 1897, and issued out of the office of the Clerk of this Court, to

enforce the collection of a judgment for four thousand dollars debt, and three hundred and fifty-one and 09/100 dollars damages and costs, entered on July 20th, A. D. 1897, in favor of said above named plaintiff and against the above named defendant, Frank W. Hatch, in the above entitled proceedings.

Your petitioner further shows unto your Honors that the said defendant, Frank W. Hatch, never had and has not now any legal or equitable interest in said property so levied upon, or any part thereof but the said property and every part thereof is the absolute property of your petitioner, and that said execution has been wrongfully levied upon the same, and that the same has been taken possession of by said Deputy Marshal wrongfully and to the injury of your petitioner.

Your petitioner therefore prays that said Deputy Marshal may, by the order of this court, be directed to release said levy as to said property and return the same to the possession of your petitioner. And your petitioner will ever pray, etc.

LEWIS HATCH.

STATE OF ILLINOIS, }
COUNTY OF MCHENRY. } ss.

LEWIS HATCH, being first duly sworn, deposes and says, that he has read the above petition by him subscribed and knows the contents thereof and that the same is true in substance and in fact.

LEWIS HATCH.

Subscribed and sworn to before me, this 24th day of August, A. D. 1897.

ANDREW NEISH,
Notary Public. [SEAL.]

ENDORSED: No. 9085. District Court of the United States. Heim, Receiver, *vs.* Hatch. Petition of Lewis Hatch. Filed Sept. 1st, 1897. T. C. MacMillan, Clerk. Geo. A. Dupuy, Atty. for Petitioner.

And afterwards, to wit, on the 1st day of September, A. D. 1897, there was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, a stipulation, which said stipulation is in the words and figures following, to wit:

Joseph G. Heim, Receiver, etc., }
vs. }
Frank W. Hatch. }

And it is hereby stipulated and agreed by and between the un-

dersigned, who constitute all the parties in interest in the case of Joseph G. Heim, Receiver, etc., *vs.* Frank W. Hatch, now pending in the United States Circuit Court, Northern Division of the Northern District of Illinois that the foregoing order may be entered by the Court.

And it is further stipulated by the parties that the said Frank W. Hatch shall execute his bond with good and sufficient sureties, conditioned that the said Frank W. Hatch will safely keep said property above referred to, and re-deliver the same to said deputy marshal, if it shall be judicially determined that said property was liable to be taken on said execution and conditioned further that the said Frank W. Hatch will hold the said Joseph G. Heim and
14 the said deputy marshal harmless from any loss, damage or deterioration in value whatever, which may be suffered by said property pending the hearing of the question raised by the claim of the said Lewis Hatch.

KENESAW M. LANDIS,
Atty. for Plaintiff.

GEO. A. DUPUY,
Attorney for Lewis Hatch.

ENDORSED: Filed Sept. 1st, 1897. T. C. MacMillan, Clerk.

And afterwards, to wit, on the 1st day of September, A. D. 1897, the following order was entered of record in said cause by direction of Hon. William H. Seaman, Judge, to wit:

Joseph G. Heim, Receiver, etc.
vs. } *9085*
Frank W. Hatch.

Order of Septem 1897.

On stipulation of parties it is hereby ordered that the sale which has been set for the second day of September, A. D. 1897, of the property levied on as the property of Frank W. Hatch, on the twenty-first day of August, A. D. 1897, by John A. Logan, a deputy marshal of the United States, by and under a certain execution against the said Hatch, and in favor of Joseph G. Heim, receiver, be and said sale is hereby stayed and postponed until time as this Court shall have first inquired into and determined the ownership of said property so levied on, claim to which property is made by one Lewis Hatch in and by his sworn petition filed in this Court in this cause on the 1st day of September, A. D. 1897.

On stipulation of the parties, it is further ordered, that pending such inquiry and determination, the said property and all of it, shall be and remain in its present situs on the farm and premises whereon it now is and whereon it was when levied upon by

r 1, 15 said deputy marshal, and said Frank W. Hatch who is hereby designated and appointed by the Court custodian of said property, and all his agents, employes, representatives and servants are enjoined and required to safely keep and retain said property on said farm, and not to dissipate, dispose of, sell or diminish in value said property, or any part or portion thereof, but they shall be and are hereby required to produce said property to the said deputy marshal, to be subjected to the process of said execution, if it be finally adjudicated that said property did, at the date of said levy, belong to the said Frank W. Hatch.

On stipulation of parties, it is further ordered, that said property may be changed in form, as by stacking or threshing of grain, or other similar manner, as may be agreed upon by written stipulation signed by the attorney of the receiver and by the attorney of said Lewis Hatch, without infringement on this order, and further ordered that the custodians now in charge of said property be, and they are hereby, discharged from further duty.

And afterwards, to wit, on the 27th day of May, A. D. 1898, the answer of John W. Arnold to the intervening petition of Lewis Hatch, was filed in the Clerk's Office of the District Court of the United States, for the Northern District of Illinois, said answer being in the words and figures following, to wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION. } ss.

In the District Court of the United States within and for said District and Division.

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch.

petition 27, 1898 16 In the matter of the trial of the right of property on the intervening petition of Lewis Hatch.

Answer of John W. Arnold to the intervening petition of Lewis Hatch.

This respondent, for answer to the petition of Lewis Hatch, heretofore filed in said cause, says that he admits that the said Lewis Hatch has owned and resided on the farm known as the Lewis Hatch Farm, in Township 46 N., R. 9, east of the Third P. M. in McHenry County, Illinois, since 1875.

Answer filed

Further answering, this respondent denies that the said Lewis Hatch has owned all of the farming implements, machinery, stock and crops on the said farm since the said Lewis Hatch has resided on the same.

Further answering, this respondent denies that the said Lewis Hatch was, on the 24th day of August, A. D. 1897, the absolute and sole owner of the following described property:

600 sheep, more or less; 45 milch cows, 15 head of young stock, 20 horses, 4 stacks of oats, 150 tons of hay, more or less; 11 hogs, 2 mowers, 1 hay loader, 4 plows, 3 drags, 3 harrows, 1 seeder, 1 corn planter, 1 pulverizer, 1 roller, 1 tedder, and 1 hay fork and tackle.

And this respondent, further answering, denies that the said Lewis Hatch is now the owner of said above described property.

Further answering, this respondent admits that on August 21st, A. D. 1897, the above described property was levied upon under and by virtue of a writ of execution, dated August 13th, A. D. 1897, issued out of the office of the clerk of said Court to enforce the collection of a judgment for four thousand ($4,000) dollars debt, and in addition to said sum three
17 hundred fifty-one and 09/100 ($351.09) dollars, damages, and the costs of the suit, recovered in said Court prior to the issuance of said execution against Frank W. Hatch and in favor of the plaintiff in the above entitled cause.

Further answering, this respondent says that at the time of the issuance of said execution and the levy of the same on said property this respondent held the office and was acting United States Marshal for the Northern District of Illinois; and this respondent further says that the said levy of said execution on said property was made by one John A. Logan, a Deputy United States Marshal for the Northern District of Illinois, in obedience to the direction of this respondent as such United States Marshal.

And this respondent prays that the said petition of the said Lewis Hatch may be dismissed by this Honorable Court, and that this respondent may be awarded his costs in this behalf sustained.

JOHN W. ARNOLD,
Respondent.

By KENESAW M. LANDIS,
His Attorney.

ENDORSED: No. 9085. U. S. District Court, Northern District of Illinois. Jos. G. Heim, Receiver, etc., *vs.* Frank W. Hatch. Answer. Kenesaw M. Landis Atty. for Respondent, Filed May 27th, A. D. 1898. T. C. MacMillan, Clerk.

18 And afterwards, to-wit, on the 27th day of May, A. D. 1898, the following order was had and entered of record in said cause before the Hon. William J. Allen, Judge, to-wit:

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *9085.*

f May 27, llowing r to be

Come the parties by their Attorneys, and on motion of counsel for the respondents, Joseph G. Heim and John W. Arnold, it is ordered by the Court, that the said respondents be, and they are hereby, given leave to file answers to the petition filed in this cause by the petitioner Lewis Hatch.

And afterwards, to-wit, on the 27th day of May, A. D. 1898, the following order was had and entered of record in said cause before the Hon. William J. Allen, Judge, to-wit:

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *9085.*

y 27, 1898.

Come the parties by their Attorneys, and this cause coming on to be heard upon the petition of Lewis Hatch, filed herein, comes a jury of good and lawful men, to-wit, William Bedford, E. C. Kelly, Hiram Gray, W. E. Davis, Jacob Glein, A. McS. S. Riddler, Alexander Campbell, Nathan Jackson, T. M. Graves, W. H. Groesbeck, G. W. Price and Henry Loucks, who are duly elected, empaneled and sworn herein to well and truly try the issues joined and a true verdict render according to the evidence, and the trial of this cause proceeds.

During the progress of the trial, counsel for the petitioner moves the Court to direct the jury to return a verdict in favor of the petitioner which motion is by the Court overruled; to which ruling of the Court the petitioner, by his counsel, excepts.

19 And now the usual hour of adjournment having arrived it is ordered by the Court that the further trial of this cause be continued until to-morrow.

And afterwards, to-wit, on the 28th day of May, A. D. 1898, the following order was had and entered of record in said cause before the Hon. William J. Allen, Judge, to-wit:

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *9085.*

This being the day to which the further trial of this cause was on yesterday continued, come again the parties by their attorneys; come also the jury who were duly elected, empaneled and sworn herein as aforesaid, and the trial of this cause proceeds. Verdict M 1898.

Having heard the evidence by the parties adduced, arguments of counsel and charge of the Court, the jury return their verdict and upon their oath do say: We the jury find the property in the petitioner Lewis Hatch; thereupon the respondents, by their counsel, move the Court for a new trial of this cause.

And afterwards, to-wit, on the 28th day of May, A. D. 1898, the following order was had and entered of record in said cause before the Hon. William J. Allen, Judge, to-wit:

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *9085.*

This cause coming on to be heard upon the motion of the respondents, for a new trial, come the parties, by their attorneys, and after arguments of counsel it is ordered by the Court that the said motion be and the same is hereby overruled and denied; to which ruling of the Court the respondents by their counsel, except; and thereupon the respondents move the Court in arrest of the judgment of the Court herein and after arguments of counsel it is ordered by the Court that the said motion be and the same is hereby overruled and denied; to which ruling of the Court the respondents, by their counsel, except. It is thereupon considered by the Court and as the judgment of the Court upon the verdict of the jury rendered herein that the right to the property in controversy herein is in the petitioner Lewis Hatch, and that the said petitioner have and recover of and from the respondents his costs in this behalf expended, for which let execution issue. Judgment 1898.

And afterwards, to-wit, on the 28th day of May, A. D. 1898, the following order was had and entered of record in said cause before the Hon. William J. Allen, Judge, to-wit:

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *9085.*

ing leave Bill' of ons.

It is ordered by the Court that the respondents be and they are hereby given leave to file their bill of exceptions and a bond in the sum of six thousand dollars within forty-five days from this date.

And afterwards, to wit, on the 8th day of July, A. D. 1898, the following order was had and entered of record in said cause before the Hon. Peter S. Grosscup, Judge, to wit:

21 Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *9085.*

ending file Bill ptions

On stipulation of parties, it is ordered that the time heretofore fixed for the filing of bond and bill of exceptions herein be extended to July 20th, 1898.

And afterwards, to wit, on the 13th day of July, A. D. 1898, the following order was had and entered of record in said cause before the Hon. Peter S. Grosscup, Judge, to wit:

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *9085.*

ending which to of ons.

On stipulation of parties, it is hereby ordered that the time for signing, sealing and filing the bill of exceptions in the above entitled cause, be and the same is hereby extended to the 28th day of July, A. D. 1898.

And afterwards, to wit, on the 26th day of July, A. D. 1898, the following order was had and entered of record in said cause before the Hon. Peter S. Grosscup, Judge, to wit:

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *9085.*

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Now comes the respondent, John W. Arnold, and presents his petition for a writ of error to the United States Circuit Court of Appeals for the Seventh Circuit, and a bond in the sum of six thousand dollars, whereupon it is ordered by the Court that the said writ of error be and the same is hereby allowed and that said bond be and the same is hereby approved.

22

And afterwards, to-wit, on the 26th day of July, A. D. 1898, a petition for a writ of error was filed in the clerk's office of the District Court of the United States for the Northern District of Illinois, said petition being in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR SAID DISTRICT AND DIVISION.

Joseph G. Heim, Receiver of the First National Bank of South Bend,
vs.
Frank W. Hatch. } *No. 9085.*

Petition f
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July 26, 18

In the matter of the petition of Lewis Hatch, trial of the right of property.

Now comes the respondent, John W. Arnold, and says that on the 28th day of May, A. D. 1898, this Court entered judgment herein in favor of the claimant, Lewis Hatch, and against this respondent; in which judgment, and the proceedings had prior to it in this cause, certain errors were committed, to the prejudice of the said John W. Arnold, respondent; all of which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore this petitioner, John W. Arnold, respondent as aforesaid, prays that a writ of error may be issued in this behalf to the United States Circuit Court of Appeals for the Seventh Circuit, for correcting the errors so complained of and that a transcript of

the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Courts of Appeals.

KENESAW M. LANDIS,
Attorney for Petitioner.

ENDORSED: No. 9085.

Petition for writ of error. Filed July 26th, A. D. 1898.
T. C. MACMILLAN,
23 *Clerk.*

And afterwards, to-wit, on the 26th day of July, A. D. 1898, a supersedeas bond was filed in the clerk's office of the District Court of the United States for the Northern District of Illinois, said bond being in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR SAID DISTRICT AND DIVISION.

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch. } *No. 9085.*

In the matter of the intervening petition of Lewis Hatch, trial of the right of property.

July 26, KNOW ALL MEN BY THESE PRESENTS, That we, John W. Arnold and Samuel M. Nickerson, both of the City of Chicago, County of Cook and State of Illinois, are held and firmly bound unto the above named Lewis Hatch, in the sum of six thousand (6,000) dollars, to be paid to the said Lewis Hatch, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 20th day of July, A. D. 1898.

WHEREAS, the above named John W. Arnold has prosecuted a writ of error to the United States Circuit Court of Appeals for the Seventh Circuit, to reverse the judgment rendered against the said John W. Arnold and in favor of the said Lewis Hatch in the above entitled suit; NOW, THEREFORE, the condition of this obligation is such that, if the said John W. Arnold shall prosecute the said writ of error to effect and answer all damages and costs if he fail to make

said writ of error good, then this obligation shall be void;
24 otherwise the same shall be and remain in full force.

JOHN W. ARNOLD, [SEAL]
SAM'L M. NICKERSON. [SEAL]

This bond to operate as a supersedeas.

Approved: P. S. Grosscup, Judge.

O. K. when stamped. Geo. A. Dupuy, Atty. for Lewis Hatch.

ENDORSED. No. 9085. Supersedeas Bond. Filed July 26th, A. D. 1898. T. C. MacMillan, Clerk.

And afterwards, to wit, on the 26th day of July, A. D. 1898, an Assignment of Errors was filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, said Assignment of Errors being in the words and figures following, to wit:

Assignment of Errors, July 26, 1898.

UNITED STATES OF AMERICA.

NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

IN THE DISTRICT COURT OF THE UNITED STATES, WITHIN AND FOR SAID DISTRICT AND DIVISION.

Joseph G. Heim, Receiver of the First National Bank of South Bend,
vs.
Frank W. Hatch.
} *No. 9085.*

In the matter of the petition of Lewis Hatch, trial of the right of property.

The Respondent, John W. Arnold, in connection with his petition for writ of error, makes the following assignment of errors, which said respondent avers occurred upon the trial of the right of property had in the above entitled cause, to wit:

I.

The Court erred in the reception of the evidence offered in the following instances, to wit:

25 (a) By Mr. DUPUY (Counsel for petitioner Lewis Hatch): "I will ask you whether or not you were in possession of "this personal property situated on the farm, being the property

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"I have mentioned, at and prior to the time that execution was "levied.

"Mr. LANDIS: I object; same reason.

"The COURT: He may answer.

"(To which ruling of the Court, counsel for the respondent then and there duly excepted.)

"The WITNESS: I was in possession of it and had always been "in possession of it. It has never been out of my possession."

(b) By Mr. DUPUY: "I will ask you to whom that property belonged at the time this execution was levied?

"Mr. LANDIS: I object; same reason.

"The COURT: I will permit him to answer.

"(To which ruling of the Court, counsel for the respondent then and there duly excepted.)

"The WITNESS: It belonged to me."

(c) By Mr. DUPUY: "Now who was the owner of this property that is mentioned in the petition filed in this cause?

Mr. LANDIS: Objected to; same objection as urged to question when put to Lewis Hatch.

The COURT: If he knows he can state.

"(Exception by counsel for the respondent.)

"A. I know; Lewis Hatch."

26 (d) By Mr. DUPUY: "In whose possession was that prop- "erty at the time and prior to the time that this exe- "cution was levied?

"Mr. LANDIS: Objected to as before.

(Overruled and exception.)

"A. Lewis Hatch."

2.

The Court erred in refusing to give to the jury the following instruction requested by the respondent in writing at the close of the petitioner's evidence:

"The Court instructs the jury to return a verdict against the "petitioner and in favor of the respondent and that the property "levied upon was the property of Frank W. Hatch at the time the "levy was made."

3.

The Court erred in refusing to give to the jury the following instruction requested by the respondent in writing at the close of all the evidence:

"The Court instructs the jury to return a verdict against the

"petitioner and in favor of the respondent and that the property "levied upon was the property of Frank W. Hatch at the time "the levy was made." Assignment of Errors 26, 1898.

4.

The court erred in using the following language in the charge to the jury:

(a) "If you believe from the evidence the arrangement be- "tween Lewis Hatch and Frank Hatch, under which the farm was "operated and carried on, was substantially such as has been
27 "testified to by the said Lewis Hatch and Frank W. Hatch, then "the natural and reasonable construction of the arrangement, as "testified to by the said Lewis Hatch and Frank W. Hatch as existing "between them, the said Lewis Hatch and Frank W. Hatch, did not "have the effect in law to vest the title of any of the property or of "the proceeds of the farm in Frank W. Hatch, although said Frank "W. Hatch may have had the power to sell the same to others with- "out any further authority from his father. You are instructed that "if you believe the arrangement and agreement between the parties "in relation to the carrying on of the farm was in accordance with "the testimony of the said Lewis Hatch on this point, then you should "find a verdict in favor of the said Lewis Hatch, the petitioner."

(To which portion of said charge the respondent, by his counsel, at the time excepted.)

The court erred in using the following language in the charge to the jury:

(b) "It was not necessary that Lewis Hatch, in order to pro- "tect his rights in this property, should assert dominion, or in any "way interfere with the visible possession and control of Frank W. "Hatch; the relation between them, as shown by the evidence in "this cause, was not that of landlord and tenant, but was more "like that of master and servant; that the possession of the son, "Frank W. Hatch, being necessary to the performance of the ser- "vice contemplated by the arrangement between them, and such "possession being determinable at any time at the will of either "party, the relation between them was not a tenancy, but the "possession of Frank W. Hatch was the possession of a servant;

"that the possession of Frank W. Hatch, both of the farm
28 "and also of the farm products and other property, as well as "of implements or live stock brought upon the place in pur- "suance of the arrangement, as part of the farm equipment, was "the possession of the father, and that, consequently, the title to "property and the possession thereof both remained at all times in "Lewis Hatch. The jury are, therefore, instructed to return a

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" verdict in favor of the petitioner, Lewis Hatch, if they believe " that the arrangement existing between the said Frank W. Hatch " and Lewis Hatch, under which said farm was carried on and " operated, was substantially as testified to by Lewis Hatch during " his examination upon that point."

(To which portion of said charge the respondent, by his counsel, at the time excepted).

The Court erred in using the following language in the charge to the jury:

(c) " Anyone circumstanced as was Lewis Hatch at the time " the arrangement was made about which he has testified in this " case had the right to make such an arrangement as he has testi- " fied to in the evidence in this case, with a son, or with anyone " whom he should choose, and such right is an important right, " which is not inconsistent with any principle of public policy, and " and which is not forbidden by any precept of the law. And the " Court charges the jury that even if Lewis Hatch had gone away, " instead of remaining upon the farm and exercising some measure " of control, that he would have the right, upon returning, to " assert title to the unsold property remaining upon the farm, " whether the same consisted of the increase in the property or of " property bought to supply the place of that which was there " when he put his son or other party in control."

(To which portion of said charge the respondent, by his counsel, at the time excepted).

The Court erred in using the following language in the charge to the jury:

(d) "In considering the testimony in the case, the evidence "afforded by the tax schedules should be regarded with caution, and "the same should be considered as not necessarily contradicting or "impeaching the other testimony concerning the relation and agree- "ments existing between Lewis Hatch and Frank W. Hatch; the in- "formalities usually attending the making of such papers, the in- "completeness of the schedules in evidence, and especially the fact "that it was the duty of Frank W. Hatch to pay the taxes under the "arrangement shown to exist between himself and his father, should "all be taken into consideration."

(To which portion of said charge the respondent, by his counsel, at the time excepted.)

5.

(The Court erred in refusing to give to thejury the following instructions requested in writing by the respondent):

Assignment of Errors filed 26, 1898.

(a) "The Court instructs the jury that when a man delivers "personal property to another man, under a contract which provides "that the person to whom such personal property is turned over is "at liberty to deliver to the person so turning over said personal "property, other property of like kind and equal in value, then the "title to the property so delivered passes to the person so re
30 "ceiving said personal property; and if the jury believe from "the evidence that the petitioner, Lewis Hatch, and the judg- "ment debtor, Frank W. Hatch, entered into a contract with, pro- "vided that the farm personalty on the Lewis Hatch farm should be "delivered by Lewis Hatch to Frank W. Hatch, and that such con- "tract further provided that Frank W. Hatch need not return to "Lewis Hatch the same specific articles of property, but that Frank "W. Hatch was at liberty under said contract to deliver to the said "Lewis Hatch, other personal property of like kind and equal in "value to that to be delivered by the said Lewis Hatch to the said "Frank W. Hatch, and you further believe from the evidence, that "under said contract the farm personalty on the Lewis Hatch farm, "was delivered by the said Lewis Hatch to the said Frank W. "Hatch, and that said contract was in force between the said Lewis "Hatch and the said Frank W. Hatch at the time of the levy of the "execution in the case of Joseph G. Heim, Receiver of the First "National Bank of South Bend *vs.* Frank W. Hatch, then you "should find by your verdict that the property levied upon was the "property of Frank W. Hatch and liable to seizure under said exe- "cution."

(To which refusal of the Court to so instruct the jury, the respondent, by his counsel, at the time excepted.)

The Court erred in refusing to give to the jury, the following instructions requested by the respondent in writing:

(b) "The Court instructs the jury that it was the duty of "Frank W. Hatch to list for taxation all property in his possession "belonging to Lewis Hatch, if the jury believe from the evidence "that said Frank W. Hatch had in his possession any prop-
31 "erty belonging to said Lewis Hatch; that it was also the "duty of Frank W. Hatch, in case you believe from the evi- "dence that he was required to list any property of the said Lewis

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"Hatch for taxation, to list the same in the name of said Lewis "Hatch and not in his own name."

(To which refusal of the Court to so instruct the jury the respondent, at the time, by his counsel, excepted.)

6.

The verdict is contrary to the evidence.

7.

The verdict is contrary to the law.

8.

The Court erred in overruling the motion of the respondent for a new trial.

9.

The Court erred in overruling respondent's motion in arrest of judgment and in entering judgment in favor of the petitioner and against the respondent.

KENESAW M. LANDIS,
Attorney for Respondent.

ENDORSED: No. 9085.

U. S. DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS.

Heim, Receiver, etc.,
vs.
Hatch.

ASSIGNMENT OF ERRORS.

KENESAW M. LANDIS,
Att'y for Respondent.

32 And afterwards, to-wit, on the 26th day of July, A. D. 1898, there was filed in the Clerk's office of the District Court of the United States of America for the Northern District of Illinois a bill of exceptions, which said bill of exceptions is in the words and figures following, to-wit:

United States of America, Northern Division of Illinois, SS. In the District Court of the United States for the Northern District of Illinois, Northern Division.

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch.
} *9085.*

In the matter of the Intervening Petition of Lewis Hatch, Trial of the right property.

Appearances:

GEORGE A. DUPUY, ESQ.,
for Petitioner.
KENESAW M. LANDIS, ESQ.
for the Respondent.

BILL OF EXCEPTIONS.

Be it remembered that on the trial in the above entitled cause of the right of property, &c., at the May Term, A. D. 1898, of said Court, before a jury, the Honorable William J. Allen, presiding as Judge of said Court, the petitioner, to maintain the issues on his part, introduced the following evidence:

Bill of Exce filed July

Mr. LANDIS: Your Honor, when this case was in the Court of Appeals there was a question raised by counsel for the claimant, relative to the failure to file or take formal issue upon this

33 petition. Now, I have overlooked this matter until this minute. It just occurs to me, and while I don't think there is anything in that question, it may be stipulated that the petition is traversed:

Mr. DUPUY: I have a motion here based on that very point, and I expected to make it at this very time.

Mr. LANDIS: I will ask leave of the Court to file a formal denial of that petition.

The COURT: I will permit that to be done.

Mr. DUPUY: I wish to note an exception to the ruling of the Court, and to now present a counter-motion to instruct the jury to return a verdict for the petitioner in this case. This case is liable go to the highest court.

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tch.

The COURT: The motion is overruled. You can save the point.

Mr. DUPUY: Let the reporter note that a counter-motion is made to take the case from the jury on the ground that no petition has been filed and there is no issue in the case to try—no answer to the petition has been filed, I mean.

The COURT: The reporter will, however, note this fact, that your motion to take the case from the jury was made after leave had been granted to the counsel on the other side to file his answer.

Mr. LANDIS: I will ask the counsel on the other side whether he wants this answer filed by the United States Marshal or by the judgment creditor.

Mr. DUPUY: I will leave that to the counsel for the respondent.

LEWIS HATCH, the intervening petitioner, being first duly sworn, was examined in chief by Mr. Dupuy, and testified as follows:

34 Q. What is your name? A. Lewis Hatch.

Q. Speak so that those gentlemen can all hear you without difficulty? A. My name is Lewis Hatch.

Q. Where do you live? A. I live in the town of Burton, McHenry County, Illinois.

Q. How long have you lived in that town? A. Well, something near sixty years—over fifty years.

Q. What is your business? A. My business is a farmer.

Q. How long have you been a farmer? A. All my days.

Q. That is, you live on the farm now? A. Yes, sir.

Q. Whose farm is it? A. It is mine.

Q. How long have you owned that farm? A. Well, now, I could not tell exactly how long, but I think some twenty-five years, my impression is.

Q. How many acres does the farm consist of? A. Well, there is somewheres about 700 acres.

Q. I will ask you whether or not it is one contiguous piece of land? A. It is all joined. It is all connected.

Q. You have heard me read this petition a few months ago? A. Yes, sir.

Q. That petition mentions a list of farm implements, stock, and so forth? A. Yes sir.

Q. I will ask you whether or not that stock is on your farm? A. There is such material there; such implements there.

Q. Is that the property that was levied on under this execution last August? A. I suppose so. I was not present when the execution was made, but I suppose that is the property—no doubt of it.

35 Q. Have you been in possession of this farm during the 25 years last passed?

Mr. LANDIS: I object to the question.

Mr. DUPUY: I will change the form of it. It is perhaps leading. State whether or not you are in possession of this farm?

Mr. LANDIS: I object to that question.

Mr. DUPUY: I shall follow that up with the question as to who was in possession of the personal property at the time the levy was made?

Mr. LANDIS: I think the question of possession, Your Honor, is to be determined by the jury from the facts; but the witness may testify first as to how the farm is handled, how it is operated and its situation there.

The COURT: Sometimes possession is actual and sometimes it is constructive, of course. What he objects to is asking this man who was in possession of the farm.

Mr. DUPUY: That is the very question I want to ask.

The COURT: An inquiry of that sort as to personal property would be permitted.

Mr. DUPUY: I will withdraw the question in relation to the real estate without pressing the matter further.

Mr. LANDIS: In this case we might as well, to save time, get down under the vest of this question at the start. The Court of Appeals has heard this case once. This question was asked in the Court before and objected to. It was asked also with reference to the possession of the personal property and objected to, and the objections were sustained, and exception was saved by counsel

36 for the petitioner and the Court of Appeals was called upon to pass upon those exceptions and Judge Woods, in his opinion says, that the question of admissibility of evidence presented by that record did not merit special consideration.

Mr. DUPUY: What he says is true, but it is only partially true. This objection was made and it was overruled; that is to say, Judge Seaman overruled me and refused to permit me to ask that question in the first instance, but when another witness came along and we had reflected on the matter somewhat he made an exactly opposite ruling.

The COURT: I will permit you to ask the question with reference to the property, and I understand you object, Mr. Landis.

Mr. LANDIS: Yes, Your Honor.

Mr. DUPUY: How long have you lived on this farm? A.

Testimony of Frank W. Hatch.

Well, I think it is—I think I built the house—the buildings were burned up on the farm. I owned it for many years. I could not say how many years; quite a number of years before I moved on it. The buildings were burned up and I built there new in 1875 and I have lived there ever since.

Q. You built there in 1875 and have lived there ever since? A. Yes, sir.

Q. Continuously? A. Continuously.

Q. You were then living on the farm at the time this execution was levied on this property I have mentioned in August last? A. Yes, sir.

Q. I will ask you whether or not you were in possession of this personal property situated on the farm, being the property I have mentioned, at and prior to the time that execution was levied?

37 Mr. LANDIS: I object; same reason.

The COURT: He may answer.

(To which ruling of the Court counsel for the respondent then and there duly excepted.)

The WITNESS: I was in yossession of it and have always been in possession of it. It has never been out of my possession.

Mr. DUPUY: I will ask you to whom that property belonged at the time this execution was levied?

Mr. LANDIS: I object; same reason.

The COURT: I will permit him to answer.

(To which ruling of the Court counsel for the respondent then and there duly excepted.)

The WITNESS: It belonged to me.

Mr. DUPUY: That is my case, if the Court please.

Cross-Examination by Mr. Landis.

Q. Do you know the defendant in execution, Frank W. Hatch? A. I do, sir.

Q. Is he your son? A. I suppose he is.

Q. Where does he live? A. He lives on my farm.

Q. Tell the jury where that farm is? A. That farm is in Burton, McHenry County, Illinois and Lake County, Illinois. It is in both counties; right on the line.

Q. Tell the jury in what school district of the Town of Burton your residence is located? A. It is in School District No. 2.

Q. And in what school district is the residence of your son, Frank W. Hatch? A. School District No. 2.

38 Q. You stated, Mr. Hatch, that you had always been in possession of this property? A. I have, sir.

Q. And that all of that property belonged to you at the time that it was levied upon? A. It did, sir.

Q. I wish you would tell the jury whether or not you were operating that farm at the time of the levy? A. I don't know how to answer your question.

Q. Yes or no. A. What was your question, please? I am very hard of hearing.

(Question read.)

A. Well, sir, my son was my manager at that time and had been for several years. I was partially retire from, did not take an active part in the work. I had him engaged for an overseer, "boss" or whatever you might call him, manager, agent, whatever you may call him. He was transacting my business.

Q. He was transacting your business? A. Yes.

Q. When did he commence to transact your business? A. Well, sir, I think he commenced in 1873 or '74.

Q. Where had he lived before that time?

Mr. Dupuy: Doesn't he mean 1883 or 1884?

Mr. Landis: We will get along, Mr. Dupuy. Just leave us alone and we will get at it.

Q. Where had Frank W. Hatch lived before he commenced to run this farm? A. He had been to school, sir, pretty much all of his days.

Q. Tell the jury, if you remember, when he quit school? A. Well, sir, I would think it was '73, but I am not positive as to dates; I am very forgetful as to dates.

39 Mr. Dupuy: It is 1883. The witness testified in the former trial.

The Court: You can call his attention to it.

A. It is not far from that date. It may have been '72 or '74.

Mr. Landis: It may have been 1884. A. But my impression is that it was '73.

Q. How old is your son, Frank W. Hatch, now? A. Well, sir, you have got me now. I can't tell you.

Q. Was it '73 or '83 that this arrangement commenced? A. Well, sir, I am clear off; it might be '83.

Q. Now tell the jury, Mr. Hatch, just what arrangement you made, if you made an arrangement, with Mr. Frank W. Hatch, relative to the management and operation of that farm? A. I will say, sir, that I think now, when I reflect upon it, that it must have been '83.

Q. Tell the jury what arrangement you made with your son for the operation of the farm?

Mr. DUPUY: I object to this question as being immaterial and irrelevant. The witness has testified that he was the owner of this

y of
s Hatch.

property; that it was in his possession. I do not see what importance it is in the case as to what arrangement was made between him and Frank W. Hatch as to the method of operating.

The COURT: Still, there may be a question as to whether he is the owner. That is the matter that is up for investigation. I think the objection must be overruled.

(To which ruling of the Court the petitioner by his counsel then and there duly excepted.)

Mr. LANDIS: (Question read). A. Well, sir; I have been tied up there all my life; my sons have been to school so that they were not much help to me, and I was getting old. I wanted a manager to manage my business so that I could get away, and I induced my son to come home after he graduated, left school, and manage the business for me, so that I could leave.

Q. Just tell the jury what the arrangement was between you and your son. Was it verbal or written? A. It was verbal.

Q. Just tell the jury, speaking so that this last gentleman in the back row can hear you, what the arrangement was? A. Well, sir, I could not tell you all the talk that was had; probably I can tell you the substance of the arrangement. I made him an offer, if he would come home and see to the business, take care of everything, so that everything did not go to ruin, do the best that he could, that I would give him the net income of the farm to get him started. That is, all expenses, everything, should be paid; all expenses paid out of the income of the farm. What was left was his salary, whether it was $1,000 or $2,000. Instead of giving him—I thought it better than to offer him a fixed sum, a thousand dollars, or even two thousand dollars for his services, because I thought the better he managed the more he would get; the better he took care of things the more he would get, and I could get along without it.

Q. Now, tell the jury what, if any, provision was made in that arrangement relative to what was to become of the personal property on the farm under that arrangement? A. Well, sir, there was this provision about it. He had the privilege of leaving at any time.

41 Q. Just tell the jury what provision was made with reference to what was to be done with the personal property? A. Everything was to be left as he found it. Everything was in running order when he came on there and he was not to dispose of things on the farm. Everything was to be kept in running order; as it was. To be paid out of the income on the farm. If the tools were out they should be replaced.

Q. By whom? A. By him, out of the income of the farm.

Q. What was he to do with respect to the stock of the farm? A. He was to do the same thing.

Q. And with reference to all the personal property on the farm that you turned over to him? A. He was to do the same thing.

Q. Tell the jury when it was that you turned over to him that personal property under that arrangement? A. I didn't turn over anything about it. There wasn't any turning over anything. He just came in to manage my business. There was no "turn over," no accounting of stock, or anything of the kind. The farm was stocked and has always been kept stocked.

Q. Did you know what was on the farm? A. I suppose I did at that time. I made no memorandum of it.

Q. Tell the jury whether or not it was a part of that arrangement that he should keep up the stock, the farm implements, and all the other personal property on that farm, and if ever he left the farm he should turn over to you the same number and value of property that you turned over to him at that time.

Mr. DUPUY: That question is clearly leading.

42 The COURT: Leading questions ought to be avoided when it is possible to do so.

(Question read).

Mr. DUPUY: The object of this question is perfectly apparent. Mr. Hatch testified a moment ago that there was no "turn over" about it. That Frank Hatch ceme on the farm and managed it for him. Failing to get such an answer to his question in that regard as he wished, counsel changes his question, and puts it in another form.

The COURT: He can answer the question.

(To which ruling of the Court petitioner by his counsel then and there duly excepted).

Mr. LANDIS: (Question read). A. Well, sir, there was nothing of that kind specified. But the understanding was, the main thing was that he should not do as a great many had done, turn off everything and leave the farm, but that he should leave everything in running order as he found it if he took a notion to go. He had the privilege of going the next year or the next day if he found a chance to go.

Q. There was no provision made with reference to his turning back property? A. He was to leave everything as he found it; leave the farm in running order.

Q. He was to keep it up at all times in the same condition that it was when he took it? A. You are very particular about "all times." That was the understanding, that he should not let things go to ruin.

Q. I will ask you, Mr. Hatch, whether you testified at the former trial of this matter? A. I did.

of Hatch.

Q. I will ask you to tell the jury whether or not you remember of being asked by myself at that time this question:

43 Q. What was the arrangement with reference to what "Frank was to turn back to you," and whether or not in reply to that question you did not say? "A. To turn back, as I said before, he "was to keep the stock in as good condition as he found it and "everything else on the farm, and everything else. Farming tools. "If the farming tools wore out they had to be replaced."

Q. Do you remember of having answered that question that way? A. Yes. It is pretty much the same thing. I think my answer now includes the same thing. That would be leaving it in the same condition as he found it.

Q. And whether or not you remember of having been asked this question at the same time and place, by myself?

"Q. He was to replace them with new ones? And you answered it as follows: A. With new ones to supply their place. If the cows got old he should turn them off and replace them with new ones, with better ones?" A. I think so; I think that is all correct. He could not keep things up in any other way without he done it. If things wore out they should be replaced.

Q. Now, I will ask you whether or not you remember of having been asked this question at the former trial by Mr. Dupuy, your counsel? "Q. Now, what has been the arrangement between you "and Frank in relation to your affairs on the farm there?" And whether or not in reply to that question, you, at the same time and place, made the following answer, after an objection and an exception and a ruling by the court? "A. That he would come

44 "home for a while and let me go out a little; take charge of "things, take care of the stock, take care of the farm and over-"see it; that I would give him for his services, the produce of the "farm less the taxes and running expenses and repairs when they "were wanted to keep up everything in repair as it was then. That "he could go at any time when he could see an opportunity of doing "better; he wanted to get into other business. He didn't want to "farm. If he would do that I would give it to him. He concluded "to come. If he thought he could do better he could go away. "He concluded to come and take care of my business, but I required "him out of the proceeds of the farm to pay all taxes for that farm "and personal property, keep up repairs and whatever was wanted; "pay all expenses. Do you remember having given that reply to that question? A. I think that is correct. Still I was so ignorant I didn't—

The COURT: Do you hear the witness, gentlemen (addressing the jury)?

(Answer read).

Mr. LANDIS: He was to have the produce of the farm, was he? A. He was to have the income of the farm. I was so ignorant, sir, that I didn't distinguish the difference, if there is a difference, between the word produce and the word income.

Q. In the answer which I have just read to you as having been giving by you on the former trial you testified that he was to have the produce of the farm; was that correct? A. You say it is there. (Referring to the type-written transcript of the testimony given in the former trial, from which counsel has been reading). You have got it written down there.

45 Q. Was that correct? A. I think that is the way that I uttered it at that time. I think it is.

Q. Will you tell the jury whether or not the signature to the petition which I now hand you, being the original petition filed by you in this case and sworn to, is your signature? A. What is the paper, sir?

Q. That is your petition filed in this case setting up your claim to this property? A. That is the name there, sir; that looks like my hand writing.

Q. Sir? A. I think that is my handwriting; Lewis Hatch.

Q. You signed such a paper, did you? A. I think I did.

Q. Now, let me ask you, Mr. Hatch; in this petition which is sworn to before Andrew Neish, Notary Public, appears these items: "Four stacks of oats." Where were those stacks of oats raised? Where were they produced? A. They were produced on my farm.

Q. The farm that your son was running? A. The farm that my son was managing.

Q. The same farm? A. The same farm.

Q. And there is: "150 tons of hay;" that is also mentioned here. Where was that hay produced? A. It was produced on the same farm.

Q. I see there are 600 sheep. Where were they produced? A. They were produced on the farm.

Q. There are 45 milk cows. Where were they produced? A. On the farm, mostly.

Q. Fifteen head of young stock? A. Some of them might
47 have been bought and brought on. I think a great part of them stock was bred on the farm. I think it was.

Q. Now, tell the jury, Mr. Hatch, what responsibilities you had under this arrangement, with reference to this property. A. What responsibilities I had?

Q. Yes, sir. A. I had the responsibilities of looking and seeing that everything was taken care of.

Q. Seeing whether Frank was carrying out his contract? A.

of Hatch. Seeing whether the stock was managed as it should be. The farming done as it should be. Whether he was managing my business in a proper way.

Q. Mr. Hatch, when were you informed to use the words "managing my business?" A. Oh! my! don't—

Q. Did you use them before, at the first trial of this matter? A. Well, sir, no matter what I used before.

Q. Tell the jury what you— A. I am talking to this jury, I am not talking to any other jury.

Mr. DUPUY: I object to this line of interrogation. The Court of Appeals has used that word in its opinion. I do not see what difference it makes.

The COURT: He is being cross-examined, and his attention is directed to testimony he gave on the former trial. Counsel has a right to know whether there is a difference between the evidence given then and the evidence given to-day.

Mr. DUPUY: I haven't the slightest objection to that.

The COURT: I understood that was the purpose. That is perfectly proper.

47 Mr. LANDIS: Can you answer the question.

(Question read).

A. If you will let me see the printed form there, I can say whether or not. I think that was written up correct.

Q. But you don't remember whether it was or not? A. I don't consider; I don't look upon it as being any different from manage, or from "produce" and "income."

Q. You haven't had any conversation with your attorney or anybody else wherein it was suggested that it would be wise for you to use that expression? A. No, sir.

Q. None at all? A. No, sir. No, sir.

Q. With whom was the responsibility of keeping up all the personal property on that farm, Mr. Hatch? A. The responsibility was with the income of the farm. The income of the farm was to do it. Frank, as my manager, was to do it.

Q. Frank, as your manager? A. Yes, sir. He was managing my business.

Q. Tell the jury, Mr. Hatch, when you were first informed that it would be a good word to use at this trial in your testimony that Frank was your manager?

(Objected to as immaterial, incompetent and irrelevant).

The COURT: I think he has been asked once. He may answer this question, whether he was informed at all, and if so, when.

A. No, sir; I haven't been informed at all.

Mr. LANDIS: No such conversation with anybody? A. No, sir.

48 Q. I will ask you to state, Mr. Hatch, whether or not you

remember of having testified, at the former hearing of this matter, in reply to this question by myself:

"Q. You may state what the fact was with reference to an "arrangement being made by you with Frank at the time you bought "those heifers (relating to certain heifers that had been bought), "and turned them over to him?"

And having given the following answer:

"A. Yes, sir; they were to be kept on the farm; grow up "and make milk cows. They are the milk cows, a great part of "them, that are now on the farm."

A. I think that is correct.

Q. And whether you remember this question:

"Q. Was there any arrangement as to his turning them back "to you when he got through?"

And replying to that question:

"A. No arrangement; only everything was to be turned back "in as good condition as he took them."

A. That is so; everything was to be left in as good condition as he took them. Everything was to be left on the farm if he chose to leave.

Q. Will you swear that you did not make this answer:

"No arrangement; only everything was to be turned back in "as good condition as he took them."

A. I don't know. I may have said, "turned back." I may not have distinguished the difference between "turn back" and "leaving."

49 Q. When were you informed as to the distinguishing difference between these expressions? A. I don't know; I am so ignorant now.

Q. And you have had no conversation between the time of the former trial, and now in regard to that? A. I have had many conversations.

Q. As to the difference between these expressions? A. No; I don't know any.

Q. And whether you remember this question: "Or if he didn't have the same to turn, to substitute it with other ones," and your replying: "A. Certainly; that was the meaning of it; that "was what was understood about it.

Do you remember that? A. I guess that is so.

Q. Whether you were asked this question:

"Q. I understood you to testify that was true with respect to "all the stuff that you turned over to him?"

And your having answered:

"A. Yes, sir."

of Hatch.

A. Now, comes up the "turn over" again. There was no "turn over."

Q. The question is, did you make that answer to that question? A. You have got it written down there. I suppose I made that answer. I might. I didn't discover that there was any very great differences in those phrases at all; "turn over," and "leaving."

Q. And whether or not you remember of this question being asked you at the same time and place:

50 "Q. He (referring to Frank), was to have the amount realized "by the sales of wool, when such sales were made?"

And your having answered:

"A. He was to have the produce of the farm. All the in- "crease of the farm except what I have stated, taxes; "expense of "running, repairs, etc."

A. That would be the income, wouldn't it?

Q. Do you remember having answered that question in that way, Mr. Hatch? A. I presume I did, if you have got it written down there. I have no doubt of it.

Q. And the arrangement, Mr. Hatch, covered all the personal farm property on that farm, did it? A. All the personal property on that farm. Everything was to be left in good condition.

Q. There are some sheep mentioned in this petition. Do you remember whether or not any of those sheep were sheared previous to the levying of this execution, at any time? A. Whether they were sheared?

Q. That is the question. A. Sheep are sheared every year.

Q. Can you answer my question, sir? A. They were sheared.

Q. Tell the jury when? A. I see what you are after. I thought at that time they were sheared in April, but I am not sure. Just read the answer. I thought, but I wasn't sure. But I have since found out by the man that sheared them that they were not sheared until May; somewhere about the 10th of May. Sheep are sheared at various times. This year some were sheared in April; some are not sheared yet.

51 Q. This arrangement that you have testified about covered all the property, including the wool sheared from the sheep, did it? A. Including everything.

Q. Now, tell the jury whether or not, at the time of the levying of this execution there was a quantity of wool on that farm? A. Why didn't you levy on it? I will ask you a question.

Q. Will you answer my question, sir? A. Yes, I will. There was a quantity of wool on the farm.

Q. Tell the jury how many years' shearing there was? A. You have got me. I think it was two year's shearing.

Q. From sheep that were on that farm? A. From sheep on my farm; my estate.

Q. The Lewis Hatch farm? A. The Lewis Hatch farm.

Q. Where you reside and where Frank Hatch resides? A. Yes, sir.

Q. Tell the jury who that wool belonged to?

Mr. DUPUY: I object to the question. It is immaterial and irrelevent. He is asking about property not embraced in the list on which this execution was levied.

(Objection overruled. To which ruling of the Court the petitioner by his counsel then and there duly excepted.)

Mr. LANDIS: (Question read.)

A. I am not trying any case of wool. I am trying the right to the property that was levied on, and nothing else.

Mr. DUPUY: The Court directs you to answer the question. You will be obliged to follow the directions of the Court.

52 A. The question is:

Mr. LANDIS: (Question read.) A. Well, sir, really I think the wool belonged to me; when it was sold it belonged to Frank. The net income of everything belonged to Frank, when the expenses were paid.

Q. Is that wool still on the farm? A. That wool is not on the farm.

Q. What became of it? A. I sold it, sir.

Q. When? A. Oh, some two or three weeks after you didn't happen to find it, I guess. If you had happenad to find it, it would be in this case and we would be trying who owned it.

Mr. DUPUY: The Court suggests to me, and I suggest to you that you simply ask such questions as are put to you? A. I am very much excited. That man (indicating Mr. Landis), has used me very bad, slandered me, and I feel very much injured.

Mr. DUPUY: You must not make an exhibition of your feelings in the matter. A. Well I can't help it.

Mr. LANDIS: I ask you to tell the jury, if you have not already done so, from the backs of what sheep that wool was cut?

Mr. DUPUY: I object to this question and to all questions in relation to this wool not levied on.

The COURT: He may answer it. Where the wool came from; what sheep.

(To which ruling the Court the petitioner by his counsel then and there duly excepted.)

Mr. LANDIS: Was that wool sheared from the backs of sheep on the Lewis Hatch farm where you and your son Frank W.

of Hatch.

53 Hatch resided? A. That wool was sheared from those very sheep, sir. At the time of the other trial I wasn't sure, but there was some brought from the other farm and put in there with it, and I am not sure yet but there was. I hardly think there was. I sometimes brought the wool from the other farm.

Q. How did you come to sell that wool at that time? A. I shall answer you in the way that I ought to have answered you then, probably.

Q. You have full liberty. A. I thought more likely if Mr. Landis didn't think he had got enough from my property to supply his execution he would be sticking his nose around the buildings again to find the wool and tie it up until this matter of Frank's was settled, and I said I thought it was better to sell it right off and get it out of the way.

Q. Do you remember of being asked this question by myself at the former trial of this case:

"Q. Just give up what that transaction was, Mr. Hatch, if "you please?"

And you having answered:

"A. Well, I should rather not state the transaction unless it "is necessary."

"Then a statement by the Court: "You say that there was a "dealing between you and him?"

"A. Yes."

"By The COURT: On which this amount of the wool was to "be turned."

"A. Yes."

"By The COURT: They are entitled to have your answer on "what that dealing was."

54 And you saying:

"A. Well, I was finding some fault with him about many "things. I thought that I ought to have something more that I was "getting."

"By The COURT: Just repeat that."

"A. I thought I ought to have something more than I was "getting. I was getting short of money and I told him that I would "take the wool and we would settle up and whenever it came up the "wool could be sold. He should have the deal all settled up and "I would do what I thought was right about it."

"You thought you should have a little more than you were "getting?"

"A. Yes, sir."

"Q. Well, what had you been getting before that, Mr. Hatch?"

"A. Oh, I had been getting my living off the farm; the sup-

"port of the family; myself and my family. I was getting short "of money and I thought I ought to have some."

Q. Do you remember having made those replies to those questions?

Mr. DUPUY: I object to that. That is entirely too long.

The COURT: If he cannot answer it, he can say so. Whether you gave that testimony before?

A. Well, I think so. There was so great a rambling to it, all over the world, and I was so flustrated—

Mr. LANDIS: And you sold the wool to keep me from levying the execution on it?

A. What is that?

Q. And you now testify that you sold the wool to keep me, the attorney in the suit against your son, to keep me from levying on it? A. That is the answer that I gave. I said that you
55 would be sticking your nose in our buildings to levy on it and would tie it up. And I thought that I had property enough of mine tied up.

Q. Do you remember being asked this question?

"Q. To whom did you sell the wool? A. I sold it to—I can't think of the man's name.

"Q. Mr. Pollock? A. Mr. Pollock; yes, sir.

"Q. He paid you with a draft? A. He did, sir.

"Q. Sir? A. He did, sir.

"Q. Payable to your order? A. Payable to my order.

"Q. Had you advised with Frank about selling the wool? "A. I did advise with him about the price. Whether he thought it was about the right price and about as well as could be done with it."

Q. Do you remember of having given those answers to those questions? A. I think likely as not if it is all so. I didn't know at the time.

Q. And do you remember being asked these questions and giving these answers at the same time and place? "A. Another thing, I began to feel alarmed about it. There was so many buildings burned; there was no insurance on it. It was in the barn and I said, more likely than not it will be burned up, and I wanted money."

Q. Do you remember giving that answer? A. I think so. I will admit it. There were a great many foolish things said at that time. Foolish questions and foolish answers, I think.

Q. Were they the truth, Mr. Hatch? A. What is the question?

(Question read.)

A. Why, yes; they were the truth.

of
s Hatch.

56 Q. I will ask you to state, Mr. Hatch, whether you remember being asked this question on cross-examination at the same time and place?

"Q. Now, Mr. Hatch, from the time you turned the farm over to Frank, down to the present time, has he paid all the taxes on the personal property on the farm except the property in your own house?" And whether you remember having at that time and place, having given me this answer; "He has." A. Didn't I say I suppose he had? Wasn't the answer, that I suppose he had?

(Question read.)

A. I presume that is correct. I presume that was correct. If you have it printed there I suppose it is the answer I made.

Q. You told the jury that this property belonged to you and was under your control at the time it was levied upon, didn't you? A. I told you so.

Q. Did you tell that to the jury? A. Well, that is the case; that was the fact.

Q. That was the fact? A. That was the fact.

Q. And I believe you testified— A. Just take the old schedules that you have got in here, just as well— .

Q. And I believe you also testified that the property was in your possession at the time it was levied upon. A. It was. It has always been in my possession. Never has been out of it.

57 Q. Will you tell the jury whether or not the paper which I now hand you, purporting to bear your signature, does bear your signature down at the bottom? A. Yes;the name at the bottom looks like mine.

Q. That is your signature, is it? A. It looks like it.

Q. Can you tell the jury whether it is or not, Mr. Hatch? A. I could not, sir.

Q. Do you remember of having testified on the former trial— A. I think it is. Somebody might have imitated my hand so that I could not tell the difference.

Q. Do you remember of having testified on the former trial of this case that it was your signature? A. I presume it is, sir. It looks like it now. I think it is. I can explain how it came to be there if it is proper and right, to throw some light on the subject for you, probably.

It is marked Respondent's Exhibit No. 1; May 27th, 1898.

Mr. LANDIS: During all the years that have intervened since this arrangement was entered into in 1893, under which your son Frank W. Hatch was to have all the produce of this farm, has he had the produce of the farm? A. He has had the income.

Q. Can you answer my question?

Mr. DUPUY: If it please the court, I object to that question. It calls for the definition of a word. The witness has stated the fact and that is all he can call for.

The COURT: Let him answer if he can.

57 (Question Read.)

A. He has had all the net income of the farm.

Mr. LANDIS: You can not answer the question? A. I can not answer your question as you want it answered. Sometimes I sold the produce and sometimes he sold it, but I never supposed that it made any difference whether I sold it, whether he sold it, or the hired man sold it. The net income was his at the end of the year. That was the understanding of it and the meaning of it.

Re-direct Examination by Mr. Dupuy.

Q. What is your age, Mr. Hatch? A. According to the old, Good Book that my father kept the record on, I was born April 20, 1814. Which would make me, according as time is reckoned, I suppose, 84 years old last April, the 20th day.

Q. Was that book correct? A. I suppose it was.

Q. Then your age is 84 years? A. 84 years. I could not swear the day I was born. I didn't happen to be old enough to know.

Q. You said that your arrangement between you and Frank W. Hatch commenced in 1873 or 1874? A. I was mistaken as to the date.

Q. What was the date that you meant to give? A. I meant to give '83.

Q. '83 or '84? A. '83 or '84, I think.

Q. Was that correct, the date, '83 or '84? A. If I could see the time that he graduated, left school, I could tell; but I think it was '83. That was my impression.

59 Q. It wasn't '73 or '75? A. No, sir.

Q. But '83 or '84? A. In '73, then, he was going to school at that time.

Q. Has Frank been the manager of this place under that arrangement ever since? A. Not all the time; no, sir.

Q. I will ask you whether or not he was not on the place for awhile? A. After he had been there about three years, I think he managed the farm about three years, lived in the house with me—the hired men all boarded in the house with me. After about three years he got married and moved away. Went to Texas; invested there. Went there calculating to stay. But he got into a sickly place, was taken sick, and his wife was taken sick, and they were

Hatch. very sick, and as quick as they got able to leave they left and came home.

Q. How long was he down there? A. I don't think they were down over six months. I don't know that they were that long.

Q. You say that he invested in some real estate there?

Mr. LANDIS: I don't suppose that this witness can testify anything about his son's stay in Texas unless he went with him.

Mr. DUPUY: Where did the son say he had been?

Mr. LANDIS: I object to the question.

The COURT: You need not answer that part of it. He can state, if you want to know, how long he was away.

Mr. DUPUY: He has already stated that.

("Answer read: Six months.")

A. I couldn't say. I would say some five or six months, but it may have been more, or may have been less.

Mr. DUPUY: That was about what year? A. He was there 60 three years—that must have been, I think, 1887.

Q. What did Frank W. Hatch do with the stock and the farm implements and other things that were under his management when he went away? A. He done nothing with the stock, or attempted to.

Q. Did he have any sale of the stock? A. Nothing of the kind. Everything was left just as it was.

Q. In whose possession was it left? A. Left in my possession.

Q. What, if anything, was said about——

(Objected to as improper re-direct examination, and improper in form. Motion to strike out the last preceding question and answer; objection overruled and motion denied; to which ruling of the court the respondent by his counsel then and there duly excepted).

Mr. DUPUY: What, if anything, was said by Frank Hatch at the time that he went away, or by you, in regard to making any sale of this property for his benefit? A. Nothing. Nothing ever said or thought of making any sale. He just left the property and the stock all in running order, the farm all in running order as he found it; left it right to me and I had the management of it until he came back.

Q. What was the intention of Frank W. Hatch, so far as expressed to you, when he went away, and what was your understanding about this moving to Texas, whether it was temporary or permanent?

(Objected to as improper in form and immaterial, irrelevent and incompetent).

The COURT: What was said, if anything, when he was leaving as to remaining away permanently; about putting an end to the arrangement that existed theretofore, and when he was to return? If anything was said on that point he can answer it. A. So far as I understood it, he left with a view to locate where he went in Texas: Intended to go into practice there.

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Mr. DUPUY: At the time that Frank W. Hatch left you and went to Texas in 1887, what, if anything, was said between him and about continuing or dissolving the relation that had existed before?

Mr. LANDIS: Same objection.

A. There was nothing said. He went away with a view of making a permanent investment where he went.

Mr. LANDIS: I understand, Your Honor, that it is not necessary in order to preserve a record in the United States Court, to make a motion to strike out in each instance.

The COURT: No, sir; you can have your exception.

Mr. DUPUY: I will ask the Court, also, whether the rule will require us to note exceptions in each instance? If an objection is made on a particular line, whether an exception need be noted to each question?

The COURT: No. You need not be reiterating every moment.

Mr. DUPUY: About what time did he return? A. As I said before, I am not certain as to the time, but I would think some five or six months.

Q. What, if any, arrangement was made between you upon his returning to the farm? A. No arrangement, only the former. He came. He came back to manage for me. No arrangement made whatever.

Q. Did he continue thereafter in the same capacity and in the same condition that he had been theretofore; is that your testimony?

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Mr. LANDIS: I object to the question, and ask that the witness be requested to state what was said. It is not proper for my adversary to put leading questions.

The COURT: Ask him whether the old arrangement continued or a new one was made.

Mr. DUPUY: I will ask you whether the old arrangement continued or whether any different arrangement was made when he continued to supervise the farm? A. There was no new arrangement made, sir, at all.

Q. I will ask you whether or not he continued on the same terms that he had been there before? A. On the same terms.

Q. How long did he supervise the farm under this latter arrangement? A. Until 1892, I think, when he went away to

of Hatch. Washington. I think it was in 1892; I am not certain as to the dates. I think it was '91 or '92, I think.

Q. Do you mean that he went to the State of Washington? A. '91 or '92, when he went to Washington.

Q. What, if anything, was done with the stock when he went to Washington? A. It was left with me.

Q. Did he make any sale, or attempt to make any sale, of the stock prior to his going to Washington?

Mr. LANDIS: He cannot testify what Frank attempted to do.

The COURT: As far as you know.

A. Never made any attempt to sell anything, as far as I know. Everything was left in my possession and under my care.

Q. Who supervised and managed while he was away? A. I did.

63 Q. What did you do in the way of supervision or management during his absence in the State of Washington? A. What did I do?

Q. Yes. A. Well, one thing, I bought forty acres of land while he was gone.

Mr. LANDIS: I ask that that be stricken out.

A. The fences were all gone on the road, and I took the hired men and went and put up a fence on the road.

Mr. DUPUY: Did you look after the stock? A. Looked after the stock and everything else as well as he would if he had been there to supervise.

Q. Did you have any other supervisor or manager during his absence? A. I didn't while he was gone.

Q. Did you while he was in Texas? A. No, sir. I supervised everything myself while he was away.

Q. When he returned from Washington did he remain on the farm afterwards? A. He did.

Mr. LANDIS: I object to these leading questions. They are very vicious. Viciously improper.

Mr. DUPUY: I will ask you whether or not Frank W. Hatch was again on the farm with you after he returned from Washington?

The COURT: He may answer that.

A. If he stayed on the farm?

Mr. DUPUY: If he was with you on the farm after his return from Washington?

A. Yes, sir; when he came back he supervised again.

64 Q. On what terms, on what agreement, if any, between you?

A. There was no agreement made whatever.

Q. The same terms that existed before? A. The same terms that existed before and had always been existing. No new agreement whatever.

Q. You were asked on cross-examination awhile ago, whether or not you had testified that Frank Hatch was to have the produce of the farm. I will ask you whether or not you desire to make any explanation of that answer? A. I do.

Q. What did you mean, when using the term "produce" on the former examination, when you testified that Frank was to have the produce? A. If I had looked in the dictionary to see the definition of the two words, probably I should have discovered the difference, but I didn't do that, and I didn't consider that there was any difference.

Q. What other word do you refer to? A. Between "produce" and the "income."

Q. What was it that Frank W. Hatch was to have? A. He was to have the net income of the farm. Everything that was produced. The net income of everything that was produced.

Q. You testified that Frank Hatch was to replace farm implements, and so forth, as they were worn out. Did he do so? A. He did; yes, sir.

Q. How much stock was there, approximately, on the farm when Frank W. Hatch assumed the management of the place in 1887, as compared to what there was at the time that this execution was
65 levied? A. Well, there was about the same amount, I suppose; I think at that time there was more sheep. The stock was changed somewhat. When this levy was made there was more cows and less cattle; less young stock. I think there was more sheep, but not a great deal of difference. There has been some ways near that number of sheep kept on the farm for a great many years.

Q. I will ask you whether or not the amount of stock on the farm has been about the same during all the years that Frank Hatch has been there? A. Just about the same. The calculation was to keep about what the farm would carry. It was a stock farm and there could be no income much from it without the stock.

Q. State what agreement was made between you and Frank Hatch in the agreement originally made, about the payment of taxes? A. He was to pay all taxes, personal, and on the real property.

Q. Was that upon the original agreement? A. That was a part of the original agreement.

Q. I will ask you whether or not he has performed his part of that agreement on that point? A. He has, so far as I know.

Q. During the years from 1884 up to the present time, except the year 1887, when Frank Hatch was away, has he paid the taxes on the property?

Mr. LANDIS: I object to the question; it has been answered a minute ago. He says as far as he knows, Frank has.

The COURT: If he knows, he can answer.

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y of s Hatch.

Mr. DUPUY: Do you know who has paid the taxes on the farm and the stock from 1884 down to the present time, except the year 1897?

66 A. I have paid the taxes a great many times. The tax collector would come and he would be away, but it was turned into the income of the farm. The amount of taxes that I paid in of my own money would come out of the income of the farm. It would be the same thing as though he had paid them. But many times when the collector came he would be away and I would pay the taxes and the receipt would be made out in my name.

Q. But you charged it up against Frank? A. Certainly.

Re-cross Examination by Mr. Landis.

Q. I will ask you to state whether or not you remember of having been asked these questions by myself on the former trial of this case and you having given these answers:

"Q. These heifers you testified about having bought, where did you buy them? A. I bought them of a man at Richmond to feed them and milk them. Q. When was that, do you remember? A. I don't remember. Q. Was it five years ago? A. Well, sir, I should think almost it was, but I couldn't say. Q. Frank went with you, did he? A. Yes, sir; and helped him get them home. Q. You paid for the heifers? A. Yes, sir. Q. And he has never paid you for the heifers? A. Oh, the pay came out of the proceeds of the farm."

Q. Do you remember having made those answers to those questions? A. I presume so, sir. I don't remember it, but I presume so. You have got that "produce" in there again. It was to come out of the income of the farm, that the heifers were to be paid for.

Q. You can't tell definitely whether you made those answers or not? A. You have got them there. I can't say.

67 Mr. DUPUY: Answer the question; do you remember whether or not you gave such testimony?

A. I can't say.

Q. Then say so. A. I presume it is correct if he has got it. I can't remember.

Mr. LANDIS: If those answers were made to those questions they were true?

A. Of course they were. You went all over creation.

Q. Let me ask you another question, whether you remember of my having asked you this question at the same time and place:

"Q. You may state what the fact was with reference to an

"arrangement being made by you with Frank at the time you "bought those heifers and turned them over to him?"

And did you answer that question as follows:

"A. Yes, sir; they was to be kept on the farm, grow up and "make milk cows, which are the milk cows, a great part of them, "that are now on the farm."

Q. Do you remember having given that anewer to that question? A. I think I did.

Q. Now, Frank has always had all of the income on this farm during all these years? A. Certainly; he has had all of the net income. All expenses had been paid out of it.

Q. Of the sheep that are on the farm now, Mr. Hatch, tell the jury how many there are? A. I can't do it.

Q. Approximately, how many? A. My opinion is that there are something like 600 or over. I think there was 600 levied on.

Q. You testified that they are in your possession and under your control. Can't you tell the jury how many there are? A. I am not the manager, I am paying a manager to attend to my business.

68 Q. About six hundred? A. I didn't count the sheep.

Q. Of the six hundred on your farm how many were there when you turned it over to Frank? A. I think there was more than six hundred.

Q. Are any of the original herd there know? A. I don't think they are.

Q. Sir? A. No. You know better than that, if you know anything. There are not any of the original sheep there now. Fifteen years ago.

Q. I will ask you to state whether or not you remember of having testified on the former trial of this case in reply to a question from me as to whether any of the original flock of sheep are on the farm now, that you didn't know? A. I don't think there was. Isn't that the answer?

Q. Did you state that you didn't know? A. What is that?

Q. Whether you stated in reply to a question from me as to what sheep were on the farm now that were on the farm when Frank took charge, you replied that you didn't know? A. I have no recollection of any such answer.

Q. Of the horses that are included in this levy, Mr. Hatch, how many were there when he took charge? A. I should think there was something like twenty; perhaps more. I think so.

Q. Of the original drove of horses that were there when he took charge, how many are now there? A. Well, sir, I don't know; I didn't think there is but one or two. I think there are two

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or three of the old horses died since the other suit was tried
69 here.

Q. Of the hogs that were levied on, how many were there when Frank first took charge? A. Of the hogs that were levied on?

Q. Yes. A. Do you suppose I am a damn fool? What answer did I make to it? You have got the question there; read the answer.

The COURT: It would be the best for all parties for you to answer the question put to you as best you can.

The WITNESS: I will try to, sir. But I have been very much vexed with that man. He has slandered me terribly, and I can't get over it, sir. He has tied up several thousand dollars worth of my property in this execution. I try to keep my temper as well as I can, but a man who will do such things—

Mr. DUPUY: I insist upon your obeying the court.

The WITNESS: I will try and keep cool. If Mr. Landis don't get too near to me.

Mr. LANDIS: (Question read.) A. The question is so ridiculous. There are none of them there that were levied on, when he took charge of the place. Anybody knows that; fifteen years ago.

Mr. LANDIS: Of the milk cows that were levied on, how many of them were there when he took charge of the place? A. I don't think there are any of them there now. I don't know but that there might have been one of the cows there when the other trial was. I don't know whether there was. I don't hardly think there was. There was one very old cow, and she may have been there, but I am not sure of it.

Q. When Frank W. Hatch went to Washington did he take his family with him? A. He didn't, sir.

70 Q. Where did he leave it then? A. He left them in his house at home. He didn't leave them in the barn.

Q. His house. Who built that house? A. He built it.

Q. Who paid for it? A. He paid for it.

Q. Where is that house located? A. Built on my land, though.

Q. Where with reference to where your house is located? A. What is that?

(Question read.)

A. It is south; pretty near south. I don't know; perhaps, well, I should say twenty rods; may be thirty. I don't know. It is all guess work, but I would think twenty rods.

Re-direct Examination by Mr. Dupuy.

Q. How long has Frank lived in that house? A. After he came back from Texas my impression is that he lived in our house with his wife for, well, a year or a year and a half before the little house was built.

Q. Where did Frank Hatch live all the time of this arrangement prior to the time he built this house? A. He lived with me until after he was married. The hired men were all boarding with me until after he was married, and I think after they came back, with his wife, that they lived in our house with us, well, I would say a year. I don't think it was two years before he built the other house. His wife wasn't satisfied. She wanted a house of her own and he built the house.

71 FRANK W. HATCH, called as a witness on behalf of the petitioner, having been duly sworn, testified as follows:

Direct Examination by Mr. Dupuy.

Q. What is your name? A. Frank W. Hatch.

Q. How old are you, Mr. Hatch? What is your age? A. Forty-one years.

Q. Where do you live? A. I live in the town of Burton, McHenry County, Illinois.

Q. What, if anything, is your relationship to the petitioner in this case, Lewis Hatch? A. He is my father.

Q. Do you know the farm on which Lewis Hatch resides? A. I do.

Q. How long have you been familiar with that place? A. I have been familiar with the land there more or less ever since I was old enough to know anything. My father, however, didn't own it that long.

Q. How long has your father lived on this farm? A. Since 1875.

Q. Were you on the farm last August? A. Yes, sir.

Q. Do you know the facts in relation to the alleged levy of an execution on a lot of property located on this farm, a list of which was read at the time that this petition was read? A. I know a great many facts in regard to it.

72 Q. Were you present when the officer came there with that execution? A. Yes, sir.

Q. How long had Lewis Hatch lived on this farm, did you state? A. Since '75.

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Q. Continuously? A. Yes, sir.
Q. Was he living there last August? A. Yes, sir.
Q. He is the owner of this farm, is he? A. Yes, sir.
Mr. DUPUY: I believe that was conceded by the other s There was no question about the ownership of the farm.
Q. Now who was the owner of this property that is mentic in the petition filed in this case?
Mr. LANDIS: Objected to; same objection as urged to q tion when put to Lewis Hatch.
The COURT: If he knows he can state.
(Exception by counsel for the respondent.)
A. I know; Lewis Hatch.
Q. In whose possession was that property at the time prior to the time that this execution was levied?
Mr. LANDIS: Objected to as before; overruled and except
A. Lewis Hatch.

Cross-Examination By Mr. Landis.

Q. Where do you reside, Mr. Hatch? A. I reside on L Hatch's farm, at Burton, McHenry County, Illinois.
Q. What school District. A. No. 2.
Q. How long have you resided there? A. I have resi there since '75.
73 Q. How long have you resided there in your own hou
A. Since '87.
Q. What are you doing on the farm? A. I am supervis the farm; superintending the farm.
Q. Who for? A. Lewis Hatch.
Q. In whose employ are you? A. In the employ of L Hatch.
Q. I will ask you to state whether you ever rented that fa A. No, sir.
Q. I will ask you to state whether or not you remember, Hatch of the occasion of Deputy Marshal John A. Logan con to that farm in August of last year, at the time that this levy made? A. I do remember it.
Q. I will ask you to state whether or not you remember having testified in this trial before Judge Seaman and a jury September? A. Yes, sir; I do.
Q. I will ask you to state whether or not you remember having been asked this question by myself on cross-examinatio that time and place.
"Q. I will ask you to state whether or not you did

"state to Deputy Marshal John A. Logan at your residence in "McHenry County the day he came there to make this levy, that "you rented the farm? And whether in reply to that you made this answer, "I did make some such statement; yes, sir; I didn't "understand, however, the nature of it."

Q. Do you remember of having given that testimony in that trial? A. You have read that pretty fast, but I think I gave that testimony in that form.

74 Q. I will ask you whether or not you remember this question by myself at the same time and place:

"Q. You didn't know what it meant to rent a farm?"

And whether you answered:

"A. I did not. I didn't fully comprehend the relation I was "sustaining to the farm. I drew a conclusion from what—"

Do you remember of having made that reply?

A. I think that is the reply I made.

Q. Do you remember of my asking you this question at the same time and place:

"Q. You then thought you were a renter?"

And you answered in reply to that question:

"A. I did so express myself."

A. I think you state the testimony correctly.

Q. And whether you were asked this question by myself at the same time and place:

"Did you think you were a renter?"

And you answered:

"I did, sir."

Mr. DUPUY: I will interpose an objection to this. These are purely legal questions. They are not questions of fact.

The COURT: He is asking him what his testimony was at the former trial.

Mr. DUPUY: I objected to it at the trial and object to it again as being incompetent.

The COURT: Objection overruled, upon the ground that he is calling his attention to the former testimony, with a view to ascertaining, I suppose, whether it is the same as he has given here to-day.

75 (Objection overruled; to which ruling of the court the petitioner, by his counsel, then and there duly excepted).

(Question read.)

Mr. LANDIS: Do you remember having given that answer to that question? A. I think I did. I don't remember the exact form of it.

Q. I believe you are a graduate of a law school, are you not? A. Yes, sir.

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Q. And you didn't know what it meant to rent a farm? A. The United States Court of Appeals said that that was a question that the lawyers didn't know.

Mr. DUPUY: I move to strike the answer from the record.

Mr. LANDIS: Let it be stricken out.

The COURT: It can go out.

Mr. LANDIS: I will ask you do you remember that Deputy Marshal, John A. Logan, at that time and place, when he came to make that levy, asking you whether or not you did not pay the taxes on the farm, personally on the farm, and you replied, yes, that you did? A. I think that is correct testimony.

Q. And whether or not he did not ask you then under what arrangement those taxes were paid by you, and if, in reply to that question, you said that in that neighborhood it was customary for the renter to pay the taxes? A. I think I did not so testify.

Q. Did you make such a statement to him at that time and place? A I think I did not.

Q. Will you swear that you did not? A. I will swear that I think I did not.

76 Q. That is as far as you go? A. I will give, if you choose, what I think I did say. Is that proper?

The COURT: Oh, yes, if you want to.

A. I said that I thought it was not an unusual thing for the tenant to pay the taxes.

Q. Now, Mr. Hatch, I wish you would tell the jury what salary you have been paid by your father to run that farm? A. I have been paid the profits of the farm, with the exception that he got whatever he chose off of the farm for his living, or for any use that he might have for it; the profits of the farm.

Q. Just tell the jury in your own way what he has got in addition to his living? A. In addition to his living? Well, he has had anything that was on the farm.

Q. Tell the jury first, Mr. Hatch, what the arrangement was under which you took the farm? A. The arrangement was that I was to take charge of everything; that I was to pay the taxes; that I was to keep the farm in good repair, so that he might sell it at any time, and that I was to take the burden of it off his hands, and that I was to receive for compensation the profits of the farm; also with the understanding that he could take whatever off the farm he chose. And that whenever either of us was dissatisfied, that the agreement would be terminated.

Q. Mow tell the jury, Mr. Hatch, what was meant by his taking whatever he wanted to off the farm, in addition to his living. You meant that he could sell stock and put the money in his

77 pocket? A. I meant that he could, if we continued the arrangement. Testimony of Frank W. Hatch.

Q. Under that arrangement he could do that? A. Yes, sir.

Q. Under the arrangement, were you under the responsibility of keeping up the stock? A. Yes, sir.

Q. The same number as you got from him? A. I understand so. If through any act of mine, the stock became depleted. If through any act of his, I wouldn't think so.

Q. Did you make any such statement as that when you testified on the former trial, when you testified what that arrangement was? A. I don't think you asked me.

Q. Did you make any such statement in giving the arrangement? A. The testimony is there.

Q. Will you answer the question? A. I can't state.

Q. I will ask you to state, Mr. Hatch, whether or not you remember of having been asked this question by your attorneys on the former trial of this case; whether you remember of having made this answer in reply to a question from Mr. Dupuy on the former trial of this case:

"A. Well, I came home then; that is, two weeks after, and "we at last entered upon the arrangement that had been talked of at "various times before; that I was to assume the management of the "farm and stay there and carry it on. My father represented that "he was getting old; that he wanted to sell the farm as soon as "there was a good opportunity, and that I was to take charge of "things and do what I could with them; pay the taxes and keep "the stock there at all times, so that it was ready to turn over to "anybody." Do you remember of having given that answer?

78 A. I think I gave that answer.

Q. Now, you say in addition to that it was understood that if your father wanted to sell off any of the stock he should have that privilege? A. You mean call it "addition." I understand that that was so implied.

Q. That the stock which you had taken care of and fed from grain, that you raise on the farm. Do you mean to tell the jury that if your father wanted to come in and sell off stock that you had raised, he could do it and put the money in his pocket; is that right? A. I think he could. What the legal aspect of it is I don't know.

Q. But that was your understanding of it, was it? A. Yes, sir.

Q. Now, there was some oats included in this levy, Mr. Hatch; where were they raised? A. They were raised on Lewis Hatch's farm.

Q. Who did they belong to? A. They belonged to Lewis Hatch.

of W. Hatch.

Q. They belonged to Lewis Hatch? A. Yes.

Q. Who did the hay belong to that was taken under this execution? A. To Lewis Hatch.

Q. Where was it raised? A. On the farm; Lewis Hatch's farm.

Q. Was it the produce of that farm? A. I think so; yes, sir.

Q. Who was present when your father and you made this arrangement? A. I think my mother was when it was made finally.

Q. Do you remember of going up to Richmond with your
79 father and buying some heifers? A. Yes, sir.

Q. Are those the heifers from which your present stock of milk cows in part was derived? A. I think so.

Q. Did you pay for those heifers? A. I think I did.

Q. Who did you pay for them? A. I don't know that I know the heifers that you refer to.

Q. Do you remember, since you were sitting here in this court room this afternoon of your father being asked about going to Richmond with you to get fifteen heifers, or a number of heifers, and as to how the heifers were paid for? A. I think he has gone with me for heifers and I think he has gone himself. He has gone with me. I think we bought those of Mr. Hastings.

Q. Who paid for those heifers? A. I think I did.

Q. And did you pay for those heifers? A. I think so.

Q. Your father didn't lend you money to pay for those heifers and then you pay your father? A. I bought those heifers to replace other stock.

Q. Who sold it? A. I did.

Q. What became of the money that came from that stock? A. Some of it paid the hired help, some of it built fences and some of it bought manure.

Q. Did you give any of it to your father? A. I think not. I think some—I suppose in some ways.

Q. But he hasn't had any interest in any of the income of this
80 farm during all these years? A. Any interest in the income? I rather think so.

Q. He has? A. Yes.

Q. Tell the jury what that interest has been? A. The interest had been that this farm should be in a prosperous condition. That I should lay out this money in improving the farm.

Q. It was part of the arrangement that you were to improve the farm, was it? A. Yes, sir.

Q. Make it better than it was when you took it? A. I think that is part of any arrangement for good farming.

Q. Was there any provision in that arrangement as to what was to become of the farm eventually? A. No definite arrangement.

Q. Was there any indefinite arrangement? A. I think so.
Q. What was it? A. I have testified to that. Father wanted to have the farm in a condition to sell at any time. He has always talked of selling the farm.
Q. Then, instead of having the income for your compensation you were to put the income into making the farm better? A. I was to put some of the income. It wasn't specified.
Q. Then, you were not only to keep the farm up in the condition in which you got it, but you were to make it better; is that right? A. That is right.
Q. Mr. Hatch, you have got some sheep out on your farm. Tell the jury when those sheep were sheared last before this execution was levied? A. I think they were sheared some time in May.

81 Q. And when was that wool sold? A. It was sold some time the latter part of August or the first of September.
Q. When was it sold with reference to the levying of this execution? A. It was sold after the levying of this execution.
Q. Tell the jury whether or not you had any interest in the sale of that wool.
Mr. DUPUY: I object to all this line of interrogation on the same ground that I did before. That it was not any part of the property levied on and I think it is immaterial.
(Objection overruled; to which ruling of the court the petitioner, by his counsel, then and there duly excepted.)
A. I had no direct interest in it.
Q. Did you have any indirect interest in it? A. Yes, sir.
Q. Tell the jury what it was? A. Simply as the son of my father to see that things went on as he thought that they ought to.
Q. What do you mean by that answer, Mr. Hatch? A. I think the answer explains itself.
Q. Explain it to the jury. I am afraid that somebody may not understand it. A. If the jury wish to have an explanation—
Q. I ask you to explain it. A. I don't think that I can make it plainer.
Q. You had no interest whatever in the proceeds of that wool? A. Except to see that my father's interests were protected as he thought that they ought to be.
Q. You didn't own that wool? A. No, sir.

82 Q. When did you sell it to your father? A. We had an understanding in regard to what wool along the fore part of the year.
Q. Tell the jury what that arrangement was? A. My father thought he ought to have more control of that wool that it would seem that he did have; so that I surrendered all my interest in it, and he was to pay me a thousand dollars for what there was; for

of
. Hatch. that wool. Some of it he had already advanced to me, and the rest of it he paid afterwards, in paying the hired help, etc.

Q. Then it was agreed at that time, when you had that arrangement with your father, that the price to you should be a thousand dollars for the wool; is that right? A. Yes, sir.

Q. Do you remember why it was that the wool happened to be sold immediately after the execution was levied, Mr. Hatch? A. I think my father stated it correctly.

Q. Can you state it correctly? A. Yes, sir.

Q. Tell the jury. A. That he was afraid that this wool would be tied up in an execution in this case.

Q. And that was the reason that it was sold? A. Yes, sir; at that time.

Q. It was not sold then because your father needed ready money? A. He did need ready money.

Q. Was it sold for that purpose? A. That was one of the purposes. That, however, wasn't the purpose.

83 Q. It wasn't sold, then, because your father was afraid that the barn might burn? A. Yes, sir; that was the reason.

Q. That was another reason? A. Yes, sir.

Q. Did those reasons exist before the execution had been levied? A. Yes, sir.

Q. So that the levy of the execution was merely an additional reason? A. Yes, sir.

Q. Tell the jury just exactly what you have done during the time that you have been on that farm as your father's manager? A. That question, I think, is a little too general. I have done a great many things.

Q. Tell the jury how you have run that farm? A. I have run that farm with the view of keeping it in good condition.

Q. Not, "with the view;" tell the jury what you have done.

Mr. DUPUY: I submit that these questions ought to be more specific. That is entirely too vague.

Mr. LANDIS: Has your father been directing you in your management of that farm in the last fifteen years? A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. To what extent? A. That is very vague question. To any extent that he saw fit.

Q. Just tell the jury to what extent he has been directing the management of that farm, Mr. Hatch. You have paid all the

84 bills, haven't you? A. Yes, sir.

Q. Did he direct you what you were to put out in this field and that other field? A He has, many times.

Q. Did he direct you when you were to sell your wool? A. Yes, sir.

Q. Did he direct you when you were to sell your oats or your hay? A. Sometimes he has and sometimes he has not.

Q. You have sold hay and wool without his directing you to do it? A. I have, sir.

Q. And what did you do with the money: give it to your father? A. No, sir.

Q. What did you do with it? A. I carried out the agreement.

Q. Put it in making the farm better? A. Partially.

Q. Did you use any of it for your personal benefit? A. I did. I invested in bank stock in Washington.

Q. Tell me, Mr. Hatch, you have testified that you have sold hay ond oats and used the money for your personal benefit; who did the hay and oats levied on here, raised on that farm, belong to? A. I have testified that they belonged to Lewis Hatch, and I so testify.

Q. And do you testify that wool cut from the backs of sheep fed on that hay belonged to Lewis Hatch, do you? A. I do.

Q. Tell the jury at what stage during this process, during this change, the wool would become yours? A. I can tell the jury that I think the wool would never become mine. I can tell them just when I think it would become mine, and it has become
85 mine; that is, whenever the wool is converted into money, and I have properly cared for the farm and paid the expenses, the profit would become mine. Then, and not before.

Q. So that when you have sold hay and grain without your father's direction and permission you have been carrying out your contract? A. I have never sold hay and grain without my father's implied permission. I have never said so.

Q. Implied permission? A. Yes, sir.

Q. Do you remember of having made bids at various times to the butter factory out there for furnishing wood to run the machines? A. I do.

Q. Where does that wood come from? A. Off of Lewis Hatch's farm.

Q. In whose name did you put in those bids prior to the levy of this execution? A. Put them in my own name.

Q. After the levy of the execution did you put in any bids? A. I did. I put in one bid.

Q. In whose name? A. In the name of Lewis Hatch.

Q. The money that you got from the wood that you sold to the butter factory before the levy of the execution, was that yours or your father's? A. Some of it was the chopper's. Very little of it was mine.

Q. The arrangement, then, after the levying of the execution, was the same as it was before? A. Yes, sir.

Hatch.

Q. Then when you put in your bids after the levy of the execution, you put the bids in your father's name? A. The same
86 amount of money was mine. It was only a form that the stress of circumstances seemed to indicate that I ought to follow.

Q. You have got a lot of milch cows out there, Mr. Hatch? A. Yes.

Q. Who does the milk money go to? A. It goes to various parties.

Q. Tell the jury who it goes to; who the money belongs to? A. It goes to the bran dealer, and goes to the hired man, and it goes to who-not.

Q. All of it? A. Not all of it, I hope.

Q. Any that does not go for expenses, do you put that in in making the farm better? A. I put some of it in in making the farm better.

Q. The bulk of it? A. Yes, sir.

Q. And you haven't any arrangement with your father by which you are to be compensated for all of this money that you are putting in making this farm better? A. I have, sir.

Q. Tell the jury what it is? A. I am to have whatever profit comes out of it.

Q. Who determines what proportion of the income of the farm is to be put into making the farm better? A. Mr. Lewis Hatch and Mr. Frank Hatch.

Q. That is settled as you go along? A. Yes, sir.

Q. What proportion of the income of the farm have you put in? A. What proportion of the income of the farm have I put in? That is a problem that I couldn't tell you.

Q. In what way have you spent that money to make the farm better? A. I have made better fences; I have manured the farm.

87 I have drained the farm more or less. I have chopped off wood and burned brush. Removed noxious weeds. Plowed deeper, and what-not.

Q. And you have no arrangement by which you are to be compensated for all this labor and money— A. I have.

Q. (Continuing) —except what part of the income you and your father agree you may keep after you have spent all this money bettering the farm?

No answer.

Q. Answer the question.

(Question read.)

A. I did not think that was a question. I understood that to be the falling inflection.

Q. Can you answer that question? A. I have answered it.
(Question read.)

Q. Have you any arrangement? A. I have.

Q. What is that arrangement? A. The arrangement is that I am to have the profits of the farm after I have carried it on, as I have indicated.

Q. That is the best answer you can give? A. I think it is a good one.

Q. Is that your signature (handing the paper to the witness)? A. Yes, sir.

Q. Do you remember, Mr. Hatch, of having stated before Mr. George A. Dupuy, a notary public, on the 11th day of September, that all the property you had was household furniture,
88 except organ, book case and sewing machine in tenant house on the Lewis Hatch farm; one road cart, three shares in the English Prairie Creamery Association, and five sheep. I made that affidavit.

Q. You remember of having made that affidavit? A. I do.

Re-direct Examination by Mr. Dupuy.

Q. When did you first make this arrangement about which you have testified? A. In 1883 or the spring of 1884.

Q. How long did that arrangement continue? A. That arrangement continued until I went to Texas, in 1887.

Q. How long were you in Texas? A. I was in Texas between three and four months.

Q. With what purpose and intent did you go to Texas?

Mr. LANDIS: Objected to.

(Objection overruled; to which ruling of the Court the respondent by his counsel then and there duly excepted.)

A. I married and went to Texas with the intent of staying in Texas. I took my wife and all my belongings.

Q. Did you locate there? A. I did.

Q. Where? A. Paris, Texas.

Q. How long were you there? A. I was there between three and four months.

Q. What did you do in the way of locating permanently there? A. I purchased a house and lot and looked around there for something to do.

89 Q. What business were you in? A. I wasn't in any business. I intended to practice law.

Q. How long did you stay there? A. Three or four months.

Q. Then did you change your plans? A. I did. At my father's solicitation and my own betterment and my health. I went

of Hatch. there in the spring of the year and the climate was too warm and unhealthy and rainy, and I was taken sick with a fever and my wife was also taken sick. That was one reason, and another was that my father wrote to me all the time that he was having a hard job to run the farm.

Q. What time did you return to Illinois? A. I returned to Illinois the latter part of August or the first of September, 1887.

Q. What did you do upon your return? A. I went immediately to working on the farm as quick as I was able.

Q. What farm? A. On the Lewis Hatch farm.

Q. What, if any arrangement, was made at that time? A. After a while, I think it was in October or November, I went to Nebraska again to look for a location. Went to Omaha. I was perhaps three or four weeks in Nebraska and at last I came home. I think the latter part of October. My father had written to me, I think, in the meantime.

Q. That was in the year of 1887? A. That was in the year 1887.

Q. That was the fall of the same year that you came back from Texas? A. Yes, sir. I came home and went to work on my father's farm the same as I had before and went and built a house.

90 Q. And what was the arrangement between you and him at that time? A. The arrangement was that I was to superintend the farm and look after things, as he expressed it.

Q. I will ask you whether or not you renewed the same arrangement that you had before or whether it was in any respect different? A. It was the same arrangement.

Q. When you went to Texes what, if anything, did you do with the stock? A. I did nothing with the stock, whatever.

Q. What did you do with the farm implements? A. Nothing.

Q. What became of the stock after you went away? A. They were in my father's possession. I left them there, at least.

Q. I will ask you whether you sold any of them prior to your departure? A. I didn't any of them; I didn't think that I had the right to.

Q. How long did you continue on the farm under the new arrangement made in the fall of 1887? A. Until the year 1892.

Q. Did you leave Illinois at that time? A. I did.

Q. Where did you go? A. To Washington.

Q. The State of Washington? A. Yes, sir.

Q. For what purpose did you go there? A. I went there with the idea of locating. I invested in stock in a bank and I invested in some town lots and thought sure that I was going immediately.

Q. Was that the same stock on which this suit was brought, on which this judgment was recovered against you? A. Yes, sir.

91 Q. It was for an assessment levied on this stock? A. Yes, sir; that is what the suit was brought for.

Q. What is the stock worth or what was it worth? A. I paid more than 100 cents on the dollar for it.

Q. And the bank failed shortly afterwards? A. The bank was rotten at the time.

Mr. LANDIS: I want to be generous in giving you latitude, but you must not persist in asking these leading questions. Mr. Hatch is a graduate of two universities.

Mr. DUPUY: Before, you were generous in admitting in the record and did admit in the record that this suit was brought for an assessment on the bank stock.

Mr. LANDIS: I will admit that that is true, and that the depositors out there never have had their money, and that this suit is brought to protect the depositors.

Mr. DUPUY: You are not a witness.

Q. What did you do upon your return to Illinois at that time? A. I fell in with the same arrangement again and I came back with the intention of going. I invested in that; I thought I should leave farming and probably get into a bank; but afterwards my father's health wasn't very good and I didn't have any very good chance of getting away, and I didn't get much income off of the farm for the next three or four years and finally the bank busted and I didn't have anything to get away with.

Q. Did you renew the old arrrngement, or what arrangement did you make upon your return? A. I made the same arrangement.

Q. Have you continued under that arrangement ever since?

92 A. Yes, sir.

Q. What was your authority in relation to buying and selling property under the original arrangement? A. I was to use my own judgment.

Q. I mean to ask you whether or not you did have authority to purchase and sell? A. I did; yes, sir; I did.

Q. I will ask yov whether or not you did purchase and sell stock from time to time? A. Sometimes I did it with my father's consent and sometimes I did it without.

Q. What do you mean by the income of the farm that you say you were to have for your services? A. That is a term my father used. I call it the profits of the farm. The net income. I should think they would mean the same thing as profits.

Q. What was your obligation as to the amount of stock that you should have on the farm? A. That I was to keep the same amount of stock on the farm; keep it any time ready to turn over.

y of
W. Hatch.

Q. The stock increased in numbers from time to time? A. Yes, sir; they were sold off; they got old and we were obliged to sell them and get others.

Q. What proportion of the stock did you have under this arrangement the right to sell and convert into income? A. I thought I had the right to sell any of the surplus stock and convert it into income by paying the expenses of the farm.

Q. After the surplus stock on the farm was sold, to whom did the proceeds belong?

93 Mr. LANDIS: I suppose you mean after any stock was sold?

Mr. DUPUY: No; I didn't ask after any of the stock.

Mr. LANDIS: I object to the question.

(Objection overruled; to which ruling of the court the respondent, by his counsel, then and there duly excepted.)

A. After the surplus stock was sold, to whom did the proceeds belong?

Mr. DUPUY: To whom did the money derived from the sale of the surplus stock belong? A. To whom did the money derived from the sale of the surplus stock belong? That belonged to me, I suppose.

Q. What was the means of income from the farm? A. It was a stock farm and the income came from whatever stock was disposed of. We didn't dispose of any hay and grain. It was all fed to the stock and we bought some also.

Q. You never sold any hay or grain off of the farm? A. No, sir.

(The last preceding question and answer read.)

A. I didn't understand that. I thought you asked me if we sold any grain; I will modify that; we did once in awhile sell a little hay; I thought he said, "Did we sell any grain?" We have sold a little hay.

Q. The thing I wish to arrive at is to ascertain from you out of what came the profits which you say belonged to you? A. The profits came from the increase of the farm; out of the surplus of the farm.

Q. Who were one of the parties that bought stock of the farm from you during the years which you had been superintendent? A. Mr. Granger and Mr. Hastings, Mr. Eldridge. Some of them have bought some stock of my father; have traded.

94 Q. Who paid the taxes on this property since 1888? A. I have paid them. My father has sometimes settled with the assessor. The receipts, some of them, have been in may father's name, but I have always settled with him for the taxes. Some of the receipts were given to Lewis Hatch for this property.

Q. What did you say was the arrangement in relation to the

payment of taxes originally? A. I was to pay all the taxes on the personal property and real estate. Testimony of Frank W. Ha

Adjourned to Saturday, May 28th, at 9 o'clock A. M.

Saturday, May 28th, 1898, 9 o'clock A. M.

FRANK W. HATCH, having resumed the stand, further testified as follows:

Re-direct Examination by Mr. Dupuy.

Q. What was the date of your trip to Washington about which you testified yesterday? A. I went to Washington the latter part of November, 1892

Q. Upon your return from Washington, what did you say was the arrangement between your father and yourself in relation to the running of the farm, subsequent to that? A. We entered into the same arrangement that we had previously; that existed after I came back from Texas.

Q. I will ask you whether or not during the progress of this arrangement, both prior to 1892, and since that time, your father has or has not, taken the produce of the farm, of various sorts, for his own use? A. He has at all times and any time, whenever there is beef butchered, or hogs butchered, or anything, he takes whatever he chooses. He takes milk or butter. He never asks me, and never thinks of it. It never occurred to me.

95

Q. Is there a garden on the farm? A. Yes, sir.

Q. What about the garden produce; who uses that? A. He does.

Q. This petition that was filed in the case enumerates a list of articles levied on, or purported to have been levied on, by the marshal last August. Are you familiar with that property? A. I am familiar with the property that I told the marshal was on the place.

Q. This mentions, among other things, twenty head of horses. I will ask you whether or not any of the horses included in that twenty were on the farm in 1894, when you first made this arrangement with your father? A. I think one of them was.

Q. A horse of any particular name? A. Yes.

Q. What did you call it? A. Billy.

Q. Were there any cows on the farm last August which are included in this list, that were on the farm when you made this arrangement? A. Not any of the original cows, I think, in 1884.

Q. Does this list include any of the cows that were on the farm when you returned from Texas in 1887? A. I think not. Some of the horses that were there in 1887 are there new.

y of W. Hatch.

96 Q. How many of them? A. There are two or three. I never have changed horses. I never bought a horse. I have sold some horses. I never bought a horse. I have never traded a horse.

Q. How many of the horses are there that is included in this list that were on the place when you returned in 1892? A. I think there are three.

Q. And how about the cows? A. I can't say. I think that some of the cows, I think, were calves at that time, that we have now; not many of them.

Q. This list mentions forty-five of the cows purporting to have been levied on by this execution. Do you know how many of those cows were on the farm in 1892 at the time that you returned from Washington? A. I think about fifteen or twenty.

Q. This list mentions eleven hogs. Do you know how many of those hogs were on the place when you returned from Washington in 1892? A. There were none of them. We do not keep hogs after they are two years old, usually.

Q. This mentions two mowers. How long have those been on the place? A. To make myself clear I may have to explain in regard to those mowers, all I know about it.

Q. I will inquire about that a little later? A. I cannot tell. I do not think the marshal saw these mowers. I mentioned certain machinery, and I have good reason to believe that he never saw them.

Mr. LANDIS: I object to this rambling conversation.

Mr. DUPUY: Did you see the marshal on the farm that day that he pretended to make this levy? A. I did.

Q. Where was he? A. I was on one part of the farm, and he took a list that is identical with that list, I think.

Q. From whom did he take such a list? A. Of me.

Q. You gave him such a list of articles? A. I did; yes, sir.

Q. Where did the marshal go after that, if you know? A. I don't know for a certainty.

Q. Where were the articles that you mentioned in this list situated and located? A. Let me explain further—that I do know that he did not go where some of the stock was that was levied on. I do know that.

97 Q. Where was the stock that you speak of situated at that time? A. Some of the stock was situated about a mile further back, that he could not go to without he went by where I was. And I know that he did not.

Mr. LANDIS: I ask that all this testimony be stricken out. It has absolutely nothing to do with the case.

The COURT: I suppose, without knowing anything about the

purpose, that the inquiry can only have reference to the validity or sufficiency of the levy. Testimony of Frank W.

Mr. DUPUY: I ask it for that purpose.

Mr. LANDIS: His client has sworn that the property was levied on.

The COURT: The petition states that the property was levied on.

Mr. LANDIS: And the petition was under oath.

Mr. DUPUY: It is a legal conclusion whether there was a levy or not. Lewis Hatch may have sworn to that petition, that there was a levy, but the law requires that this property should be taken in possession of the marshal.

The COURT: I understand—I may be mistaken, but I understand that it is a question merely as to the ownership of the property, and this levy comes in question. Of course the officer making the levy must have the power in order to make the levy good. It must be in his possession. He must have the power to take charge of it. You say that that property was levied on by a United States Marshal, that was the property of another; and you ask, in effect, that the court protect your rights as owner of the property. I do not know whether you pray a return. I did not notice that particularly. It is a question of the right and title to the personal property. I do not think that was very important.

98 Mr. DUPUY: Will the court let me make the offer?

The COURT: Yes. And I don't see any particular objection to it, except it is not necessary.

Mr. LANDIS: We can save time by having the record show in that connection that subsequent to this levy a stipulation and agreement was entered into between the attorneys representing the parties, the Messrs. Hatch, and the judgment creditors, providing that this property should be redelivered from the Marshal to Frank W. Hatch as the officer of this court to keep it as the special custodian of this court.

Mr. DUPUY: I agree in the stipulation just now made, that it has been delivered to him as the special custodian of this court under an order heretofore entered, and that he has held possession under such direction from that time to this.

Mr. LANDIS: Delivered to him by the marshal.

Mr. DUPUY: That is not in the stipulation.

The COURT: You make that offer. How long will it take to make this offer?

Mr. DUPUY: Just a moment.

The COURT: Go on.

Mr. DUPUY: We offer to show by this witness that the property was never reduced to the possession of the marshal. That part

of Hatch. of it he never saw. That the same was never within his power or control.

(The offer is overruled, as I understand the court, and exception. The offer of counsel for the petitioner is overruled; to which ruling of the court petitioner, by his counsel, then and there duly excepted.)

99 Mr. DUPUY: Where was this personal property located that is mentioned in this list? A. The property that I think is in that list, the mowers and agricultural instruments, they are located on the Lewis Hatch farm.

Q. Where on the farm? A. The hay was on various parts of the farm; the corn was stacked near the house of Lewis Hatch, in the stack yard.

Q. Let me ask you more specifically: Two mowers are mentioned; where were they? A. I think that the mowers I intended are in the barn of the Lewis Hatch farm.

Q. How long have those mowers been on the farm? A. They have been on the farm a great many years.

Q. Were they both, or either of them, bought prior or subsequent to the time that you first came there in 1884? A. They were bought prior to that time.

Q. Both of them? A. No; one of them. One of them was bought when I was away to Texas in 1887.

Q. Who bought that mower, if you know? A. My father bought both of them.

Q. There is one hay fork mentioned. How long had that been on the farm? A. It had been on the farm some sixteen years.

Q. About what time was it brought there? A. About seventeen years ago.

Q. Who bought it? A. Lewis Hatch.

Q. Who paid for it, if you know? A. I do not know.

Q. Four plows are mentioned. How long have those been on
100 the farm? A. In that barn where there were four plows, and as I indicated to the marshal, they were there; I think that two of them were on the farm when I came, and two of them I bought.

Q. Who bought those that were on the farm before you came, if you know? A. I do not know.

Q. Three drags are mentioned. How long had those been on the farm, respectively? A. I think they had been on the farm a great many years.

Q. Were they bought prior or subsequent to the time you first came there? A. They were bought prior.

Q. Do you know who paid for them? A. No, sir.

Q. Three harrows are mentioned? A. Well, I take them to be the same as the three drags.

Q. One seeder was mentioned. How long had that been on the farm? A. It was a Gorham seeder and had been there some fifteen years or twenty years.

Q. Who bought it? A. I don't know.

Q. Did you buy it? A. No, sir.

Q. Was it bought since you came onto the form? A. No, sir.

Q. Was it on the farm when you first came there in 1884? A. Yes, sir.

Q. One corn planter was mentioned. How long has it been on the farm? A. I can't say; there are two; one I bought and one my father bought.

Q. One pulverizer? A. There are two pulverizers. One is an Acme and one is a disc.

101 Q. One roller is mentioned; who bought it? A. I didn't buy it.

Q. How long has it been on the farm, that particular roller? A. That has been on the farm about sixteen or seventeen years.

Q. One tedder is mentioned. Who bought that? A. My father.

Q. How long had it been on the farm? A. I think about twenty years.

Q. One hay fork and tackle? A. I think the hay fork in that barn is the old one. The tackle is a new one that I bought to put in place of an old one.

Q. Did you buy the hay fork? A. I think not.

Q. I will ask you whether or not it was there when you first came on the farm? A. I think I did buy it.

Q. These various farming implements that you bought, for what reason did you buy them? A. I bought them to replace other implements that had worn out.

Q. I will ask you whether such purchase was or was not made in accordance with your agreement with Lewis Hatch when you first came on the farm? A. It was, sir. I was to keep all the tools in repair.

Q. I will ask you whether your father ever made any sale of those implements that were there prior to the time that you came there? A. No, sir.

Q. What, if anything, did he ever make a present to you? A. I will add further that he has sold some since I have been there.

102 Q. What, if anything, did he do about making them a present to you? A. He never made me a present of any of

Hatch. them. He has always been careful that they should be housed.

Q. I will ask you if your father has done any acting supervising of the farm and its management, and the stock and its management, since you have been on the farm?

Mr. LANDIS: Objected to as leading.

The COURT: What has he done, if anything, in that regard?

A. He has done may things. He has bought the cows. He has had a tenant about three or four miles from there and when they sold the farm he has brought the cows there; he brought the sheep there. He has brought sheep and put them on there and taken sheep away. He has traded horses. He has done many things.

Q. What, if anything, he has done in the matter of asking your permission to do such acts? A. He never has.

Q. What, if anything, has he done regarding shipping sheep off the farm? A. He has shipped two or three carloads of sheep off the farm. There have been sheep bought and sheep shipped off. He shipped some to Dakota.

Q. This farm is what is ordinarily known as a stock farm, I believe? A. Yes.

Q. I will ask you what relationship the stock on a stock farm bears to the stock itself? A. I think they go together. A stock farm is practically useless when it is denuded of stock.

Mr. LANDIS: I will stipulate that with you.

Mr. DUPUY: I do not care to stipulate. I will ask the questions briefly.

103 Q. I will ask you whether or not a stock farm is capable of being used for such without the stock that is on it? A. No, sir.

Q. Has any of the stock mentioned in this list died since this levy was made? A. Yes, sir.

Q. What stock has died since the case was last heard? A. There have been some sheep. One or two horses.

Q. Have you a paper in your possession that you showed me this morning? A. Yes, sir.

Q. Let me see it, please. Look at this letter which I now show you and tell me what the same is? A. The same is a letter from my father to me.

Q. Written what date, or about what date? A. May 2nd, 1887.

Q. Whose signature is it to that letter? A. Lewis Hatch.

Q. Look at the envelope which I now hand you and tell me what that is? A. That is the envelope that it came in.

Q. Is that the identical envelope in which that letter was received by you? A. Yes, sir.

Q. Are those the original postmarks on it? A. I think so.

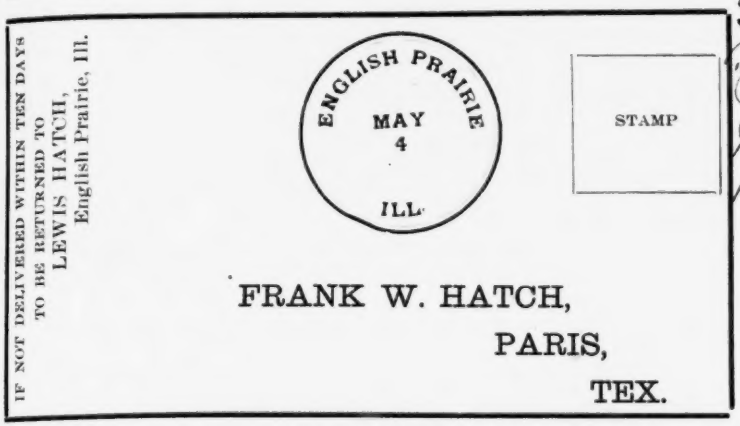
Q. Where is it post-marked? A. English Prairie, Illinois. Testimony of Frank W. Ha

Mr. LANDIS: The envelope itself is evidence.

Mr. DUPUY: I shall introduce it in a moment.

Mr. LANDIS: What is the use of taking up all this time with immaterial, incompetent and improper questions?

Mr. DUPUY: I offer in evidence a portion of a letter from Lewis 103½ Hatch to Frank W. Hatch, dated May 2nd, 1887, which reads as follows: And also the envelope in which the same is stated to have been mailed. Bearing post-marks "English Prairie," May —— 1887"; and "Received at Paris, Texas, May —— 12 o'clock a. m. 1887."



Stamp
returned
"Pario,
May 6,
1887. Re

104 "Now as to your coming back I have not a word more to say I have said all that was necessary before you went away you know what the terms are & they are nothing different from what they have been formerly you are there & and you had better take time & investigate thoroughly before you settle down to stay & if you finally conclude that Ill. is good enough & think best to come back the latch string is out & there is plenty of room here & I shall be awful glad to be relieved of this drudgery I have stood it pretty well so far but I cannot stand it long—bed time & I am very tired so no more—write often.

Affectionately your father L. HATCH."

The portion of the letter which we wish to introduce, reads as follows: "Now, as to your coming back, I haven't a word to say. I have said all that was necessary before you went away. You know what the terms are. There is nothing different from what they were. From what they have been formerly. You are there and you had better take time and investigate the country before you

y of
. Hatch. settle down to stay there, and if you finally conclude that Illinois is good enough, and think best to come back, the latch-string is out and there is plenty of room here, and I shall be awful glad to be relieved of this drudgery. I have stood it pretty well so far, but I can't stand it long. It is bed time and I am very tired, so no more. Write often. Affectionately, your father, L. Hatch."

(The letter and envelope are received in evidence without objection, and are marked petitioner Exhibits 1 and 2, respectively.)

Q. The terms that are mentioned in this letter, are they, or are they not, those that were mentioned yesterday?

Mr. LANDIS: I object to that question. Lewis Hatch is the one to testify to that.

The COURT: You can ask that afterwards.

Re-cross Examination by Mr. Landis.

105 Q. Who does the farm implements that you have bought since you have been on the farm belong to? A. To my father.

Q. What did you do with the implements that took the place of those that you bought; at the time that you bought these farm implements and paid for them, what became of the farm implements that ware rendered useless by the purchase of these new ones? A. They are most of them stored in the barn.

Q. Who do they belong to? A. To Lewis Hatch.

Q. The old ones belong to him and the new ones that you paid for belong to him? A. They do. They are no better, I suppose, than the original ones.

Q. You testified to some sheep having been brought there by your father; where did they come from? A. I can tell you where some of them came from.

Q. Tell the jury. A. Some of them came from my father's tenant farm, which he sold.

Q. Which farm is that? Is that the farm? A. I have heard it so designated.

Q. Where is that farm? A. It is about four miles from where we live.

Q. Is that the forty acres that was mentioned here yesterday? A. No, sir.

Q. What is that? What is the size of that farm? A. Something over 200 acres.

Q. Did he ever bring any sheep there from the farm on which your brother Fred resides? A. I do not know.

Q. Are you sure that he did not? A. I am not sure about it at all.

106 Q. Do you know whether he has had any sheep on his farm on which your brother Fred resides? A. My father?

Q. Yes. A. I do not know.

Q. You do not know that he has been raising sheep there the same as he has on the farm that you live on? A. It is not likely that I would know.

Q. Why not? A. I am attending to my own farming.

Q. Aren't you your father's managing? A. I am my father's manager on that farm.

Q. Only on this farm? A. Yes.

Q. Your jurisdiction does not extend over the Jake Wasneiski farm or over your brother Fred's farm? A. I so testified.

Q. You say that he shipped some sheep off to Dakota; what sheep were those? Sheep that he brought to the farm and raised? A. Some of them.

Q. Did he ever ship any sheep to Dakota out of the flock on the Lewis Hatch farm? A. Yes.

Q. That was the flock that you had received from him and the descendants of those you had received from him? A. Yes, sir.

Q. He shipped those to Dakota? A. Yes, sir.

Q. Did he bring them back or did he sell them in Dakota? A. He sold them in Dakota.

Q. Did he give you the money? A. No, sir.

Q. They were taken out of the flock that you were under

107 obligations to keep up, were they? A. Yes. Allow me to explain that he also brought other sheep onto the farm.

Q. Did he bring other sheep onto the farm to take the place of the sheep that he took away, sheep by sheep? A. No, sir. I have also said that there was as implied agreement—

Q. I don't want your implied agreement. I want your express agreement. A. I have a right to explain.

Q. You can explain to your counsel at the proper time. You have testified that under this arrangement you had to keep up this stock. Now, you testify that your father took out of the stock—how many do you say? About how many sheep do you say that he shipprd to Dakota out of that flock? A. I don't know.

Q. Did you know then? A. I don't know whether I did or not. I think I did.

Q. Well, tell us what your best recollection is? A. My best recollection is that I knew then.

Q. What was it? A. I don't know now.

Q. You don't know? A. No.

y of
. Hatch.

Q. Was it five hundred? A. No, sir.

Q. Was it two hundred? A. I think it was. No, I don't think it was quite.

Q. Tell the jury—you have got down now close to 200; how many was it? A. I have told the jury just what I know about it.

Q. Was it 150? A. I don't know.

Q. Didn't you testsfy on the former trial of this case that it was between 150 and 200? A. I may have done so.

Q. Was it the truth? A. I testified to the truth on the former trial as far as I know.

108 Q. Did he bring back 150 or 200 sheep and put them back in that flock that you were responsible to keep up? A. I think he did.

Q. Do you know whether he did or not? A. I know that he brought about that number back. About the number he took away.

Q. For that purpose? A. I don't say for what purpose; I don't know.

Q. Did he bring them there to feed and sell, or did he bring them back and say, "Frank, I have brought back the sheep that I took away?" A. I don't think that he made any application.

Q. You were responsible for this flock, and he took those sheep away, and you don't know how many he took and don't know whether he brought them back or not? A. No, sir.

Q. Don't you know anything about it? A. I do, sir. I can tell you the whole story.

Q. Now, Mr. Hatch, tell the jury when you sold this property to Lewis Hatch, this property that was levied on under this execution? A. When I sold it to Lewis Hatch?

Q. When you sold it to him. A. I have testified to the jury that I never owned it.

Q. You never sold it to him? A. I never sold it.

Q. Just let the jury and the court get along and you answer my questions. Did you ever sell this property to Lewis Hatch? A. I did not.

Q. I wish you would look at that document and tell these gentlemen whether that is your signature? A. That is my signature.

109 Q. You didn't sell this property or any of it to Lewis Hatch before the first day of June, 1897? A. I never sold it to Lewis Hatch at any time.

Q. Nor you didn't give it to him after that date and before this levy? A. No, sir.

Q. I believe you said that he didn't have any sheep, or you

didn't know whether he had any sheep on his farm where Fred lived? A. I did.

Q. Where does that farm lay? A. About three miles.

Q. Is it a stock farm? A. Yes, sir.

Q. How large is it? A. It is some 200 acres.

Q. Do you think you would know whether he had any sheep there that he brought to this farm where you were? A. I don't think I catch that question.

(Question read.)

A. Let me see if I understand that. You mean to ask me if he—

Q. (Question read.) Don't you understand that question? A. No, sir.

(Question read.)

A. What do you mean by that?

Q. Do you think you would know whether he ever brought any sheep from the farm where Fred lives to the farm where you live? I mean during the last fourteen years? A. I do not remember whether he did or not.

Q. When you went to Washington, did you bust this arrangement with your father? A. Yes, sir.

Q. Put a stop to it? A. Yes, sir.

Q. And arranged that your family should follow you out there? A. No, sir.

110 Q. Tell the jury what you did about putting an end to things when you left? A. I simply went away and my father took the whole matter in his hands—

Q. No. You left your family behind? A. I left my family behind.

Q. You left intending not to come back? I can't go so far as that.

Q. You went out there to look over the ground; is that it? A. I went there to look over the ground and to locate if I liked it.

Q. How long were you gone? A. I was gone about five weeks, I think.

Q. Then you came back? A. Yes, sir.

Q. And you have been there ever since? A. Yes, sir.

Q. And you made a new agreement when you got back? A. We agreed to resume the old arrangement.

Q. When you left you didn't intend to locate permanently, you said a minute ago? A. I had that intention, to locate permanently.

Q. Then you didn't go simply to look over the ground? A. Yes, sir; with the intention of locating permanently. I went to

of Hatch. look over the ground with the intention of locating permanently, is the whole truth, as I understand it.

Q. What condition was the farm in when you took it in 1883, as to fences, and one thing and another; was it in repair or out of repair? A. It was in tolerable repair.

Q. Was it in what you call good repair? A. I think so.

Q. Have you kept it in better repair than your father did? A. Yes, sir.

Q. You have put in better fences? A. I do not think I have.

111 Q. You have kept the fences about it? A. Yes, sir.

Q. So that when you testified yesterday that you had put in better fences you were mistaken? A. Did I testify that I had put in better fences?

Q. You did. Tell this jury what you want them to believe. A. Well, I think the fences are really better than they were. I have made a great many new fences. Some of the old ones are worn out.

Q. As a matter of fact hasn't it been your policy, or haven't you, in running that farm, kept it up in good repair, as you found it when you took it from your father? A. In as good repair?

Q. Yes. A. I have kept it up in better repair.

Q. You have made improvements and spent money that made the farm worth more than it was when you took it, have you? A. Yes, sir.

Q. And you have no arrangement with your father that you are to get anything for that? He can sell it at any time and put the money in his pocket? A. Yes, sir.

Q. Getting the benefit of all these years of your hard labor? A. I think I won't be greatly indebted to him.

Q. I should think not, under that arrangement. A. He will not be greatly indebted to me, I mean. That is what I mean. I don't mean to say that I have done more than the fair thing.

Q. I will ask you to tell the jury whether you remember of being asked this question on the former trial of this case by myself on cross-examination:

112 "Q. Now, who does the wool belong to from the sheep?

"A. I don't know."

Do you remember of having so answered that question? A. Yes, sir.

"Q. Is that a profit of the farm? A. The wool—well, I "think it is a profit of the farm, when all expenses are paid; I take "the profit to be what you get, minus the expense."

Do you remember that question? A. I do.

"Q. Your arrangement with your father was that you were

"to take the sheep and the cattle and the hogs and the horses and "the farm; you were to feed the sheep and the horses and the cattle "and the hogs with stuff which you raised mainly on the farm; now, "that being true, isn't the wool cut from the back of the sheep that "ate the hay that grew on the farm that your father owned, a profit "of the farm?"

Do you remember that question? A. I do, now that you read it.

And your having answered:

"A. Do you want me to draw a conclusion from that argu- "ment?"

And this question:

"Q. I would like to have you draw a conclusion; you have "used the word profit; do you bring that within the word profit? "A. I think not."

Do you remember that? A. No.

Q. You do not? A. No.

Q. Well, did you say that or not? A. I think I did.

"Q. Whose wool was it that your father marketed to Mr. "Pollock about four or five weeks ago?"

113 And you answered:

"A. My father's wool."

Do you remember that? A. Yes, sir.

"Q. It was your father's wool? A. Yes, sir."

Do you remember that? A. Yes, sir.

Q. And this question———

Mr. DUPUY: I object to further interrogation on this line. I think it was incompetent originally and I think it is not at all material now. I object to it as incompetent and immaterial.

The COURT: He is laying a foundation to contradict the witness, I suppose. It is only relevant in that light. If he wants to show that the witness made different statements on the former trial from what he said here, he has a right to call his attention to the evidence he gave then.

Mr. DUPUY: I object to his manner of interrogating the witness. He reads a long string of stuff and it is hard for him to answer yes or no.

The COURT: The witness seems to be intelligent and can protect himself.

Mr. LANDIS: Tell the jury where you have been educated. Where did you first go to school? A. I went to school first in the town of Burton, District No. 1.

Q. When did you first go away to school? A. To Elgin Academy.

Q. How long did you stay there? A. About a year.

of Hatch.

Q. And then where did you go? A. I went to Champaign.
Q. How long there? A. Three or four years.
114 Q. Four years? A. Yes, sir.
Q. Then did you go east? A. Yes.
Q. Tell the jury to what school?
The COURT: I hardly think it is necessary.
A. I have never boasted of my learning.
Mr. LANDIS: Yale college?
Mr. DUPUY: Do not answer the question. The court says it is unnecessary.
Mr. LANDIS: I will ask you if you remember being asked this question:
"Q. You didn't sell your father that wool?" "A. I did make an arrangement with him."
Do you remember that? A. Yes, sir.
"Q. Tell us, Mr. Hatch, what that arrangement was? A. That arrangement was that he was to have the wool."
Do you remember that? A. Yes, sir.
Mr. DUPUY: I again object to that testimony. It is not contradictory.
Mr. LANDIS: It will be contradictory in three lines.
The COURT: He is going to get to the point.
Mr. LANDIS: "He was to have it? A. Yes, sir.
Q. Go on. A. That he was to sell it?"
Do you remember those answers to those questions? A. I don't think that I can follow that.
Q. "A. That arrangement was that he was to have the wool. "He was to have it? A. Yes, sir."
115 Did you answer "yes, sir" to that question? A. I think I did. I don't know just where the question comes in.
Q. Now, the question:
"Q. Go on. A. That he was to sell it?"
Did you answer that question that way? A. I think so. It is rather confusing when you read in the middle of a long page.
Q. "A. And get what he could out of it, and that I was to "pay him what he had advanced me on the wool."
Do you remember that answer? A. Yes, sir.
Q. "Q. Out of the wool? A. Out of the wool."
In that fight? A. I think so.
Q. "He was to take out of what he got for the wool the "amount he advanced you?"
Q. And you answered, "Yes, sir." Is that right? A. I think so.
Q. "Q. That would look a good deal like it was your wool? "A. It would look a good deal that way; he was a good deal agi-

"tated over the question, and we didn't know whether it was my "wool or not; that was what it amounted to."

Do you remember that answer? A. Not with that emphasis.

Q. That substantially? A. No, no. Those are the words.

Q. You remember the words? A. I remember the words, but not the accent and gesture.

Q. Tell the jury, Mr. Hatch, whether you remember of having been asked this question by me on cross-examination on the former trial:

116 "Q. You have testified the arrangement was, you were to "take the farm and the personalty on the farm."

And your answer, "Yes, sir." Do you remember that? A. No, sir; I don't remember it.

Q. Did you testify to that or not? A. I think I did. I don't remember.

Q. Did you testify to that? A. I think I did.

And this:

Q. "You were to rent the farm?" A. "Yes, sir." A. I think so; I cannot remember any one of those little questions. If you would read the whole of it, perhaps I could remember the whele of it.

Q. Do you remember those answers? A. I say that last small answer like that; I wouldn't like to put myself on oath.

Q. No, we must be careful about our oaths. A. Certainly.

Mr. DUPUY: I object to the attorney continuing to lecture the witness about what his duty is. I note an exception to the remark of the counsel.

Mr. LANDIS: I would like to have you tell the jury whether you remember being asked by me on the former trial, in substance, whether or not your father had ever collected money from the milk that was taken, and the buttermilk taken from the cows on this farm?

(Objected to as immaterial and incompetent.)

The COURT: It is a circumstance, perhaps, that he desires to put in evidence touching the inquiry here, the ownership of this property. It is not for me to say how important or how unimportant it is. It is offered with a view of contradicting the witness' remark.

117 Mr. DUPUY: I ask the counsel to state in what way the testimony is contradictory to anything that has been testified to here.

Mr. LANDIS: This entire testimony is contradictory to this proposition that Mr. Lewis Hatch owns this property.

The COURT: Proceed.

of Hatch. Mr. LANDIS: Do you remember of having been asked that question? A. Please ask that question again.

Q. Whether you were asked by me in substance whether your father ever collected any of the milk money at the butter factory for milk that was taken from the cows on the farm that you were running? A. Ever collected any of the milk at the butter factory? I don't think I ever answered that question.

Q. Didn't you state on the former trial of this case, in reply to such a question as that from me, substantially, that your father had been collecting the milk money at the butter factory after the levy of the execution? A. I don't think so. I can say what I think I did say. I think I said that he collected money from checks of the creamery.

Q. This was on the 24th day of last September, before Judge Seaman and a jury. Let me ask you if you remember being asked this question by me, speaking of his collecting these moneys. "Do you remember when? He got some, I think it was about two weeks ago." Do you remember that? A. No; may be I would if you would read the whole connection.

Q. Did you say that or not? A. I don't know.

Q. Do you now remember whether he did or not? A. Did what?

118 Q. Get some money for the milk that came from the cows on this farm about two weeks before that testimony? A. I can tell you the whole transaction.

Q. Whether you were asked this question: "It was since this execution was levied, wasn't it," and you answered, "It was, sir." You remember that? A. If you will read the whole connection I can tell you quite readily.

Q. And this:

Q. "And that is all the money he has gotton out of the milk, isn't it," and you answered, "Yes, sir." Do you remember having given those answers to those questions? A. I think I did give an answer to such a question.

Q. On the first day of May or the 15th day of June, 1897, you say the wool was in the barn on the place there; was it? A. Yes, sir.

Q. How many years' shearing were there? A. In the barn at that time?

Q. Yes, sir. A. There were two years.

Q. Was that before or after you and your father made this contract by which the wool was turned over to your father? A. It was after.

Q. When was that contract made? A. Some time in April.

Q. What was the necessity of making a contract to turn that wool over to your father if the wool belonged to him in the first place? A. It was not really turned over.

Q. Did you make the contract? A. It was placed so that I had no interest in it, that was all—that he had the sole interest.

119 Q. Tell the jury what that arrangement was? A. That arrangement was for the consideration of a thousand dollars, that I was to have nothing more to say about the wool.

Q. It was his wool anyhow, wasn't it? A. Yes, sir; but I should sell it as soon as I chose to.

Q. You could sell it and put the money in your pocket, couldn't you? A. If I kept up expenses.

Q. Answer, yes or no? A. I cannot answer that yes or no.

Q. I am going to ask you to take these twelve men and Judge Allen into your confidence, and tell them just exactly what that arrangement about that wool was. You say that wool belongsd to your father in the first place? A. Yes, sir.

Q. And that in consideration of a thousand dollars to you, you agreed to have nothing to say about it. Tell them what you mean by that answer.

Mr. DUPUY: I object to this testimony as incompetent, immaterial and irrelevant to the issues in this case.

Mr. LANDIS: It is very objectionable to that side of the case, but it is very material.

The COURT: You may answer.

A. I cannot make any explanation to this jury unless I go over the whole business as I understand it. I had been borrowing money along of my father, and I owed him some five hundred dollars that he paid the hired men, etc., and he took the wool and was to allow me a thousand dollars for it, and part of it was this five hundred dollars. He was to advance me money afterwards to pay the hired help, etc., and he did.

120 Mr. LANDIS: It was his wool to start with? A. Yes, sir.

Mr. DUPUY: I object to that question. That is one of the mooted legal questions in this case, and it is not proper or competent for the counsel to ask that question of this witness.

Mr. LANDIS: It goes clear down under the vest of this lawsuit.

The COURT: The right of cross-examination is an invaluable one, but it does not follow that the cross-examination should be argumentative.

Mr. LANDIS: Then you have nothing that you care to say to the jury in explanation of that situation of the wool? A. I don't see how I can make it plainer.

Mr. LANDIS: I guess not.

of Hatch. The WITNESS: I think it is plain. I should say that until the wool was sold it was really my father's, but if I should sell it and pay the expenses and taxes and everything, whatever I made out of it should be mine, according to our understanding, but I gave the wool solely into my father's charge and had nothing to do about it, and he paid me the money.

Q. Did you and your father keep an account there and have a settlement at the end of each year? A. No, sir.

Q. When did you determine what the income of the farm was? A. We never determined it.

Q. You took the money that came from the sales of produce on the farm as it came in from time to time, didn't you? A.
121 Yes, sir.

Q. You paid out that money, barring the expenses as they arose from time to time? A. I cannot say that I took it in. Father has taken it in sometimes.

Q. Taken it to himself? A. Yes, and paid it over to me, less what he had advanced to me, quite often.

Q. But directly or indirectly, when anything was sold it came back to you, didn't it, in money? A. Not the whole of it. My father has taken it upon himself whenever there was anything paid for that he took it out from what came back to me.

Q. But I say the expenses being taken out of the receipts— A. The rest of it came back to me as profit.

Q. You didn't have any arrangement by which you had a settlement at the end of the year showing what the income was? A. No, sir.

Re-direct Examination by Mr. Dupuy.

Q. You testified that you put the farm in better condition than it was when you first received it, somewhat? A. Yes, sir.

Q. I will ask you what, if any, advantage you received yourself by so doing? A. I received better returns all the time.

Q. I will ask you if the farm could be kept in a productive condition without attending to the fences and making other repairs?

A. I don't think the farm or anything can be kept in paying
122 condition without its being bettered. If it is allowed to lie about the same it is pretty sure to grow worse.

Mr. LANDIS: What you have done in that regard was simply for keeping the farm in a good farm manner; is that right? A. With a proper understanding of good farm manner, it is.

Mr. DUPUY: Look at this schedule; that is your signatu re you stated? A. Yes, sir.

Q. Where was that schedule made out? A. It was made out on the street in the village of Wilmot, Wisconsin.

Q. How far is that from your farm? A. About two miles and a half.

Q. Who presented you that schedule? A. Mr. Stephens.

Q. Who was he? A. The Assessor.

Q. For that year? A. Yes, sir.

Q. In whose handwriting is the body of the schedule? A. I think it is all in Mr. Stephens' handwriting, except my signature. It is not in mine.

Q. Where were you at the time the schedule was made with reference to Mr. Stephens; what position? A. I had hauled a load of cord wood to Wilmot and Mr. Stephens was there waiting for me. He was on the ground and I was on the wood rack. We were in a hurry, it was late at night and I had one previously made out, but I didn't have it with me, so we hurriedly made out this one and we got the number of the stock, and I signed my name there, being quite certain that the heading was not made out.

Q. Were you sworn to that schedule at the time?

123 (Objected to; that the schedule states for itself, and the objection is overruled).

Q. Were you sworn to that schedule by Mr. Stephens at the time? A. There was no formal oath.

Q. Can you answer the question whether you were sworn or not? A. I cannot swear whether I was or not.

Q. I will ask you whether or not the body of the instrument was filled out before you names was attached?

(Objected to as having been answered).

A. I think not. I think all of that instrument was not filled out.

Q. The instrument contains these words, "A Schedule of the number, quantity and quality of all personal property in the possession or under the control of F. W. Hatch," at the commencement of the schedule. Were the words "F. W. Hatch," written in there prior to the time this schedule was signed? A. I didn't see them there; I think not.

Q. I will ask you whether or not the figures on the margin were made before the schedule was signed? A. I don't know.

Re-cross Examination by Mr. Landis.

Q. Why didn't you swear to these things before when this case was up? A. I don't remember.

Q. You were confronted with that tax schedule when this

of Hatch. case was up before weren't you? A. I was asked if that was my signature, I think.

Q. Mr. Stevens, the tax assessor before whom that oath appears to have been taken, was present at that former trial,
124 wasn't he? A. Not when I was asked about this.

Q. He was present in attendance at that trial, wasn't he? A. Not the whole of it.

Q. Wasn't he at the trial part of the time? A. He was at the trial part of the time.

Q. He was not put on the stand as a witness, was he? A. I didn't see him there.

Q. Don't you know that he was not put on the stand as a witness? A. I don't know whether I can swear to that or not. I don't think he was. I didn't see him.

Q. Weren't you at the trial all the time? A. I don't know. I think I was there all the time. I might have been out a few moments.

Mr. DUPUY: Was any question asked you at the former trial as to whether or not you had sworn to that schedule? A. I think not.

Q. It simply was introduced to speak for itself, by Mr. Landis? A. That is my impression.

Mr. LANDIS: You were asked at that time as to whether or not that was your signature, weren't you? A. Yes, sir. I was asked this time, and swore to the same thing.

Q. You did not say or intimate at that trial that you did not swear to that thing, did you? A. I did not this time until I was asked.

Q. How did you happen to make that oath on this occasion? A. On which occasion?

Q. Right now. How did you happen to swear that you think you did not swear to this thing; that you are not sure whether
125 you did or not? A. I was asked that question.

Q. When did you first talk about it before to-day with your counsel? A. I don't know.

Q. Tell the jury when you think you first talked about it? A. I don't remember.

Q. Was it since the former trial? A. I didn't know anything about it at the former trial. I never saw that schedule from the time it was made out until the former trial. You asked me if it was since the former trial. It must have been. I never saw it before.

Q. Tell the jury when you first had a conversation with your attorneys to the effect that you did not remember whether that had

Testimony of Frank W. Hatch

been sworn to or not. A. I don't know that I have ever had a conversation with him about it.

Q. Wouldn't you remember whether you had or not? A. I have talked a good deal about that schedule. I did not expect he was going to ask me that question.

Q. So you came into court without expecting to be asked that question? A. That particular question; yes sir.

Q. Or any question in substance the same? A. I don't know about that. I don't know what the substance is.

Mr. DUPUY: I wish to be sworn in this case as to this point.

The COURT: What point?

Mr. DUPUY: Whether he understood that he was to testify that he had not sworn to this schedule.

The COURT: You have a perfect right to talk to the witness as to what you are to ask him, and it is the duty of counsel to do that.

126 Mr. LANDIS: I suppose it is also the duty of witnesses if they are asked by counsel on the other side what conversations they have had with counsel about it, if they have had conversation, to tell the truth.

The COURT: Yes, sir; many witnesses seem to think it is a sort of imputation that counsel have talked with them about the case.

Testimony of Lewis Hatch (recalled.)

LEWIS HATCH was recalled, and further testified as follows:

Mr. DUPUY: I will ask you whether or not that reference made in that letter that was introduced in evidence a little while ago, sent to Frank Hatch in Texas, referred to the prior arrangement that existed between yourself and Frank Hatch before he went to Texas?

The WITNESS: The question is whether that refers to the former arrangement between myself and Frank?

Mr. DUPUY: Yes.

A. Certainly.

Cross-Examination by Mr. Landis.

Q. What arrangement did you have with Frank relative to when you would have a settlement each year and determine what the income had been from the farm?

(Objected to by Mr. Dupuy as not proper cross-examination.)

Mr. LANDIS: I ask leave to recall the witness for cross-examination on that point.

The COURT: Let him answer.

The WITNESS: What is the question?

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127 Mr. LANDIS: What arrangement, if any, did you have with Frank as to when you would cast up the accounts and balance the books each year? A. No arrangement.

Q. What did you mean yesterday when you said in reply to a question from me on cross-examination, "During all the years that have intervened since this arrangement was entered into in 1893, under which your son, Frank W. Hatch, was to have all the produce of this farm, has he had the produce of the farm?" You answered, "He has had the income."

Did you answer that that way?

A. Yes, sir; I did.

Q. And this question: "Can you answer my question," and whether you answered that question this way, "I cannot answer your question as you want it answered. Sometimes I sold the produce and sometimes he sold it, but I never supposed it was any different whether I sold or whether he sold it or the hired man sold it; the net income was his at the end of the year." Do you remember of answering that question in that way? A. Yes, sir; I think I did.

Q. Do you know whether you did or not? A. If you have got it written down there I suppose it is. I do not remember the exact words.

Q. Is that the substance of it? A. I think so. It is true anyway. The net income of the place is his.

Q. At the end of the year? A. End of the year or any other time.

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hens.

128 D. A. STEPHENS, a witness on behalf of the petitioner, being duly sworn, testified as follows:

Direct Examination by Mr. Dupuy.

Q. What is your name? A. D. A. Stephens.

Q. Where do you live? A. Town of Burton.

Q. Do you know Lewis Hatch and Frank Hatch. A. Yes, sir.

Q. How long have you known them? A. Ever since I was old enough to remember. I was born there.

Q. You have known him many years have you? A. Yes, sir.

Q. Were you tax assessor up there in the year 1897? A. Yes, sir.

Q. I will ask you whether or not as such assessor it was part of your duty to make out and take these schedules of property owners? A. Yes, sir.

Q. Look at this schedule and see whether or not you made out that schedule?

Mr. LANDIS: That is objected to. It is not all made out by him.

Mr. DUPUY: I will interrogate him a little further about it.

The COURT: Has that paper ever gone to the jury?

Mr. LANDIS. Never.

The WITNESS: Yes, sir.

Mr. DUPUY: If it is not going to the jury I do not care to examine him about it.

129 The COURT: Do you propose to offer it?

Mr. LANDIS: That is my present intention, but I do not see how the question is proper.

The COURT: You may ask him.

Mr. DUPUY: In whose handwriting is the body of that schedule? A. Mine.

Q. In whose handwriting is the heading of the schedule at the top? A. It is my handwriting.

Q. Where the name Frank W. Hatch occurs at the top of the schedule there, in whose handwriting is it? A. That is my handwriting there.

Q. Is there any of Frank W. Hatch's handwriting on the page?

(Objected to, as no foundation has been laid for the question.)

Q. Do you know whether there is any of Frank W. Hatch's handwriting on that page? A. The signature.

Q. Did you see Frank W. Hatch sign it? A. Yes, sir.

Q. State whether or not the body of that schedule was filled out prior or subsequent to the time that Frank Hatch signed it?

(Objected to, for the reason that a public officer cannot be made to stultify himself in this way.

The COURT: He may state the facts connected with the signature.

Mr. DUPUY: If you know.

The WITNESS: Whether this was filled out by them?

Mr. DUPUY: Yes. I hardly think it was at the time, still I do no know. I often filled them out afterwards.

Q. Where was that schedule made out and under what circumstances? A. It was in Wilmot. Mr. Hatch stood on his

130 wagon and I stood up by the side of the wagon.

Q. Where was the writing done at the time it was done by you? A. It was done right there. I stood by the side of the wagon and done the writing.

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Q. You had a book in your hand and did the writing then and there; is that true? A. Yes.

Q. What, if anything, was done by you in the matter of swearing Frank W. Hatch to the schedule?

(Objected to and objection overruled.)

Q. Just relate the facts and circumstances? A. There was nothing done, only when I got the figures made out here I handed the papers for him to sign.

Q. That was the whole transaction?

(Objected to as leading.)

A. Yes, sir; that was all.

Cross-Examination by Mr. Landis.

Q. You have subscribed at the bottom there, have you, your name; is that your signature? A. Yes, sir.

Q. Read to the jury the printed line about that signature? A. "Subscribed and sworn to me this 15th day of June, 1897."

Q. Subscribed and sworn to before me this 15th day of June, A. D. 1897? A. Yes, sir.

Q. Under the law as tax assessor it was your duty to swear the witness to it, was it?. A. I presume so.

131 Q. Don't you know that it was? Don't you know that the law of Illinois makes it a penal offense for an assessor to fail in his duty in that regard? A. Yes, sir.

Re-direct Examination by Mr. Dupuy.

Q. I will ask you whether or not it is customary and usual or frequently done that parties are not sworn to their schedules? A. They are not; not to raise their hands and swear them; it is not customary.

(Objected to.)

Mr. LANDIS: I object to the custom; it is this instrument we are interested in and I ask that it be stricken out.

The COURT: I suppose the custom is not proper; he has stated what was done; this gentleman is not on trial; he is introduced to state as to a particular transaction, and he has stated it.

Mr. DUPUY: I wish to show that there is great infoamality attending ordinarily the making out and returning of schedules.

The COURT: The jurors may know something about that themselves as a matter of common experience in life. I do not think it is important.

Testimony of D. A. Steph

Mr. DUPUY: I wish to preserve in the record my offer to show the informality attending these matters.

The COURT: Yes, sir; it may be a fact, but it is not important.

Mr. LANDIS: As I understand that offer it goes to the extent of showing that this particular assessor did not do his duty; is that it?

132 Mr. DUPUY: No, sir.

Mr. LANDIS: I want the offer put in as you want it.

The COURT: Gentlemen, I think the witness has testified to all that is necessary.

Testimony of Robert Thom son.

ROBERT THOMPSON, called as a witness on behalf of the petitioner, having been duly sworn, testified as follows:

Direct Examination by Mr. Dupuy.

Q. What is your name? A. Robert Thompson.

Q. Where do you live? A. Town of Richmond, McHenry county, Illinois.

Q. How long have you lived in McHenry county? A. Nearly all my life.

Q. Do you know the Messrs. Hatch, parties to this suit? A. Yes, sir.

Q. Or Lewis Hatch, a party to it? A. Yes, sir.

Q. How long have you known them? A. Ever since I can remember.

Q. I will ask you whether or not you ever lived near their farm? A. Yes, sir.

Q. How close? I adjoined farms with them.

Q. How many years? A. Nine.

Q. What years? A. I commenced in 1880, I think, and was there until 1889.

Mr. LANDIS: What do you mean by their farm?

Mr. DUPUY: Note the question and let it pass.

Q. What years did you live there? A. I think I commenced living on the farm adjoining Lewis Hatch's in 1880 and was there nine years.

133 Q. I will ask you whether or not you were tax assessor out there certain years? A. Yes, sir.

Q. What years? A. I commenced assessing, I think, in 1884, and I was assessor, I think, for five years.

Q. Did you list the property situated on this farm for taxation during those years? A. Yes, sir.

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Q. Whom did you see about that? A. I went to see Mr. Lewis Hatch, and he referred me to Frank, his son.

Q. What did he say about it?

Mr. LANDIS: This is all objected to. They cannot make testimony by declaration.

The COURT: I do not see the relevancy of that. You do not want to make testimony out of what Mr. Hatch said, do you?

Mr. DUPUY: I apprehend that statements made to these officials at the time—

The COURT: Do you want to show a course of business as to listing property?

Mr. DUPUY: More particularly as bearing upon the relationship between these parties.

The COURT: You can show that by those who know of the arrangement or those who know the conduct of the two parties. As to what either one said about it in the absence of the other, I do not know on what principle it can be admitted.

Mr. DUPUY: A great deal of testimony has been introduced or sought to be brought out in the cross-examination, supposed to be contradictory of the statements made by those two parties about what this arrangement was. It appears to me that any state-
134 ments made by Lewis W. Hatch to these officials or other persons years ago in relation to this matter would be competent to support the original testimony in the case as to what this arrangement was.

The COURT: If it is objected to, the objection will be sustained. Anything Hatch, being the claimant of the property, might have said in derogation the others might introduce. I do not think you can produce as original testimony what your client said about this matter to strengthen his claim to the property.

Mr. DUPUY: I will ask you whether or not there is a general reputation in the neighborhood among the public there as to who is the owner of this property situated on this farm and whether there has been for years part—whether you know whether there is such a general reputation?

(Objected to as incompetent.)

The COURT: Do you want to prove title by reputation?

Mr. DUPUY: I want to introduce the reputation as a circumstance going to support a title, showing where the title is vested.

(The objection was sustained.)

Mr. DUPUY: Will the court permit me to make the offer a little more formal?

Mr. LANDIS: If it is possible for me to bring twelve or fifteen of the near neighbors of Mr. Hatch on this question I will let the evidence go in without objection.

Testimony of Robert Thomson,

The COURT: It cannot go in now. I must exercise some little control though I do not think it is very great, over this case.

Mr. DUPUY: We offer to prove by this witness and by three other witnesses now present in court that there is a general
135 reputation in relation to the ownership of the property among the people residing in the neighborhood of this farm, and that that reputation is that Lewis Hatch is the owner.

(Objected to; objection sustained, and Mr. Dupuy excepted on behalf of Lewis Hatch.)

Testimony of H. A. Jones.

H. A. JONES, a witness on behalf of the claimant, was duly sworn, and testified as follows:

Direct Examination by Mr. Dupuy.

Q. What is your name? A. H. A. Jones.

Q. Where do you live? A. Town of Burton, English Prairie, Illinois.

Q. What is your business? A. I work for Mr. Hatch.

Q. Do you work on the Hatch farm? A. Yes, sir.

Q. How long have you worked there? A. This is my third year.

Q. You know both of the parties to the suit? A. I do, sir.

Q. What is your duty on the farm? A. Common farm hand.

Q. Has it been during these three years? A. Yes, sir.

Q. From whom do you take your orders on the farm? A. From both of them.

Q. I will ask you whether Lewis Hatch has resided on the farm during the three years last past? A. Yes, sir.

Q. What, if anything, have you seen him do or heard him say in relation to the supervision or oversight of the farm? A. Nights when I would come in from work he has asked me about
136 the things that were going on.

Mr. LANDIS: This is objected to.

The COURT. What he has seen him do in the way of control is proper, but statements when the other party was not present, as to the terms of the contract or anything of that sort would not be proper.

Mr. DUPUY: Go on.

A. I have seen him boss me around, and the rest of the men.

Mr. LANDIS: I ask that that be stricken out. They cannot go off in the barn and make testimony against my client in this way.

The COURT: If it refers to conduct it may go in.

of Jones.

Mr. DUPUY: You refer to the conduct of Lewis Hatch in supervising and managing the farm? A. Yes, sir.

Q. What else? A. I have had him come out in the field where I was ploughing with a plough that he did not think worked right and send me to the house with it to get another.

Q. What, if anything, has Lewis Hatch done in the way of looking after the stock, so far as you know? A. He has always looked after the stock since I have been there; fed a great many of them and found a great deal of fault with the way Frank has fed a good many of them.

Q. What, if anything, has Lewis Hatch done in regard to supervising the cultivation of the soil? A. He has looked over it all since I have been there.

Q. Can you be more specific? A. I can tell what I have heard him say, perhaps. I have heard him find fault.

137 Q. To whom?

Mr. LANDIS: This is all objected to.

A. He has found fault to me, and I have heard him find fault with Frank; one thing about some plowing that we done last year and we are doing the same this year. It was so far away he claimed it was not profitable.

Q. What, if anything, have you seen or heard Lewis Hatch do or say in regard to fences and other items of farm management? A. I have heard him find a great deal of fault with the gates.

Q. About the machinery of the farm, farm implements? A. If anything gets broke he finds plenty of fault.

Q. When Frank W. Hatch has been away, from whom have you received your orders? A. Lewis Hatch.

Q. State what you know, if anything, in relation to Lewis Hatch having had supplies off of the farm in the way of vegetables from the garden and other farm products? A. Certainly he has had whatever he wanted.

Q. State what he got? A. He has been anywhere on the farm and taken whatever he wanted for the house.

Q. What use has he made of things so taken? A. Used them in the house.

Q. Where do you board? A. I take my meals with Frank Hatch and I room with Lewis Hatch.

Q. How far are the houses apart? A. I should think perhaps the distance of half a block; may be a little more.

Q. Have you done that during all the three years you have worked there? A. Yes, sir; with the exception of two years.

Cross-Examination by Mr. Landis.

Testimony of H. A. Jones

Q. Who are you working for now? A. I am working for
138 Frank Hatch.

Q. You expect to continue in his employ, do you? A. Yes, sir.

Q. You state that Lewis Hatch complained last year about plowing some ground? A. Yes, sir.

Q. And he complained again this year? A. Yes, sir.

Q. Why was it that you plowed it at the same place or in the same way this year if he complained about it! A. That I couldn't tell.

Q. Wasn't he bossing the farm? A. I suppose he was.

Q. Why did you happen to plow that same field this year? A. I suppose he was overruled.

Q. We don't want your supposition. How did you happen to plow it again the same this year as you did last year when the boss of the farm didn't want it plowed?

Mr. DUPUY: He has not stated that the boss of the farm didn't want it plowed.

Mr. LANDIS: Who ordered you to plow it the second year? A. Frank Hatch.

Q. Now, you say the gates were out of order? A. I didn't say they were out of order.

Q. You say that Lewis Hatch complained about the gates. What was the trouble with them? A. He claimed they opened hard, and so on.

Q. That is the substance of his complaints about the gates, is it? A. Yes, I have heard him make other complaints.

Testimony of J. Motley.

139 J. MOTLEY, a witness on behalf of the petitioner, having been duly sworn, testified as follows:

Direct Examination by Mr. Dupuy.

Q. What is your name? A. J. Motley.

Q. Where do you live? A. Town of Burton.

Q. Do you know Lewis Hatch and Frank Hatch? A. I do.

Q. How long have you known them? A. Three years or over.

Q. How far do you live from the Lewis Hatch farm? A. A trifle over half a mile.

of Granger.

Q. How long have you lived that distance from him? A. About 30 years; ever since Mr. Hatch has lived on the farm he now lives on.

Q. Dou you know anything about the conduct and management of the Lewis Hatch farm during several years last past? A. I do; yes, sir.

Q. State what you know about the supervision and management of that farm during several years last past? A. Mr. Frank Hatch always seems to do the business when he is there, and when he is away the old gentleman has always seemed to take charge of it.

Q. Do you know of Frank Hatch's migration to Texas some years ago? A. I do.

Q. Who had general control and management of the farm while he was away? A. Lewis Hatch.

140 (Question objected to).

The COURT: I think that is not important in this controversy because it is not contradicted by anybody.

Mr. DUPUY: I will withdraw the question.

The COURT: The only question is whether any control was exercised, and if so, what that meant when Frank Hatch was away.

(Cross-examination waived).

F. K. GRANGER, a witness on behalf of the petitioner, was duly sworn, and testified as follows:

of Granger.

Direct Examination by Mr Dupuy.

Q. What is your name? A. F. K. Granger.

Q. Where do you reside? A. McHenry, Illinois.

Q. What is your business or occupation? A. Farmer, general dealer and a variety.

Q. Have you been a dealer in stock, A. Heretofore.

Q. Do you know the Hatches, father and son? A. I do.

Q. How long have you known them? A. I presume I have known the old gentleman 40 years and the boy since he was a boy.

Q. Have you ever bought stock from either of them? A. I have.

Q. Off this Lewis Hatch farm? A. Yes; I have bought off from the present farm that they now occupy, but not much for the last four or five or six years—off from the farm that the old

141 gentleman lived on prior to his moving onto this farm, for a good many years.

Q. That was more than 25 years ago, wasn't it? A. Yes, sir. Testimony of F. K. Granger.

Q. Do you remember buying some stock from one or the other of them within the last six or eight years, eight or ten years? A. I think the article of live stock that I bought of them was a drove of steers, perhaps a car load of steers.

Q. What time was that? A. I haven't looked up my book to see, but from memory I should say probably in 1892, in the spring in 1892; possibly a year one way or the other from that.

Q. Was it while Frank Hatch was on the farm? A. Frank Hatch was on the farm, that is, Frank Hatch was there at the time that I bought the steers.

Q. To whom did you pay the money for those steers? A. My recollection—it is some time ago—when I paid the elder Mr. Hatch for the steers.

Q. Whom did you first speak to in relation to the purchase of them?

(Objected to and question withdrawn.)

Cross-Examination by Mr. Landis.

Q. Are you a member of the Legislature of Illinois? A. I think the record will so show.

Q. I am asking you, are you a member of the Legislature? A. I am.

Q. Were you in attendance at the Legislature at the last session? A. I was.

142 Q. Did you vote for the Humphrey bill? A. It was not at the last session that that was voted on. I voted for it; yes, sir.

Q. And the Allen bill? A. And the Allen bill.

Q. You are a political adversary to the Messrs. Hatch, are you not? A. I don't know that I am.

Q. Aren't they political enemies of yours? A. Not that I know of.

Q. Aren't they political friends of yours? A. Not that I know of. I suppose they are my friends in politics and in everything else.

The COURT: I hardly think that I will go into that investigation.

Mr. DUPUY: I want to investigate the whole question, or none.

The COURT: I haven't time.

Mr. LANDIS: I offer to prove by this witness that the Allen bill was either a good or a bad thing—

The COURT: I haven't any jurisdiction over a matter of that sort and I don't care to take any.

of Hastings. H. M. HASTINGS, called as a witness on behalf of the petitioner, having been duly sworn, testified as follows:

Direct Examination by Mr Dupuy.

Q. What is your name? A. H. M. Hastings.

Q. Where do you live? A. Richmond, McHenry, County, Illinois.

Q. How long have you lived in McHenry County? A. I
143 think about 28 years.

Q. Do you know Mr. Lewis Hatch and Mr. Frank Hatch? A. I do; yes, sir.

Q. How long have you known them? A. I think about 20 years.

Q. Do you know the Lewis Hatch farm, so-called? A. Yes, sir.

Q. What is your business? A. Farmer and live stock dealer.

Q. I will ask you whether or not you ever bought stock off of the Lewis Hatch farm. A. I have.

Q. When? A. I bought two car loads of stock there in 1895.

Q. What did you buy? A. I bought twenty steers and 95 lambs.

Q. To whom did you pay for this stock? A. Lewis Hatch.

Cross-Examination by Mr. Landis.

Q. What did Lewis do with the money you paid him for the stock? A. I couldn't tell you.

Q. Do you know that he did not give it to Frank? A. I don't know anything about it.

Q. He did not say that they were not Frank's stock, did he? A. He didn't say anything about it.

Q. How many head of stock were there? A. Twenty head of steers and 95 lambs.

Q. You paid Lewis Hatch? A. Yes, sir.

Q. How much, do you remember? A. I think $960 for the steers and $307 for the lambs.

Q. That would be a little over $1,300? A. Yes.

Mr. LANDIS: I want to ask Lewis Hatch and Frank W.
144 Hatch one question each.

(Mr. Dupuy objected to any further examination of the witnesses, and the objection was overruled.)

LEWIS HATCH was recalled and further examined by Mr. Hatch as follows: Testimony of Lewis Hatch (recalled.)

Q. In this Hatch schedule of personal property subscribed by you, personal property in School District No. 2, June 15, 1897, you mention a safe and watches and clocks and knitting machines and plated ware; where was that property? A. It was in the house.

Q. Where was all the property mentioned in that tax schedule? A. In the house.

Q. Your residence? A. It was in my residence.

FRANK W. HATCH was recalled and examined by Mr. Landis as follows: Testimony of Frank W. H (recalled.)

Q. I would like to ask you where this property included in this cash schedule of personal property June 15, 1897, was located at that time? A. On the Lewis Hatch farm.

Mr. LEWIS HATCH was recalled and examined by Mr. Dupuy as follows: Testimony of Lewis Hatch (recalled.)

Q. Look at the schedule which I now show you which is marked "Respondent's Exhibit No. 1," which purports to have your signature to it which is the same paper shown you yesterday by Mr. Landis, counsel for Mr. Heim, and say whether you swore to that paper as it purports that you did do? A. I did not.

145 Mr. LANDIS: Mr. Stephens who was the assessor at that time was in attendance at the former hearing of this case, wasn't he?

A. I do not remember.

Mr. DUPUY: There is one question I would like to ask Thompson.

The witness THOMPSON was recalled and further examined by Mr. Dupuy as follows: Testimony of Robert Thom son (recalle

Q. You were assessor how many years? A. Nine years in the Town of Burton altogether, but not in succession.

Q. How many schedules were made out each year by these parties in relation to property on this farm? A. One.

of Thompcalled.)

Q. Who paid the taxes under that schedule on all the property?

(Objected to.)

Mr. LANDIS; Were you Treasurer of that County? A. No, sir.

Q. Do you know who paid it? A. No, sir.

Mr. DUPUY: In whose name was it scheduled?

(Objected to as secondary evidence; that the schedules are the better evidence.)

Mr. DUPUY: The schedules are destroyed at the end of two years.

The COURT: If he knows in whose name they were scheduled he may answer.

A. The first three years I think that I assessed the town; Lewis Hatch gave in the assessment. Frank was not at home, I think. After that Frank Hatch gave in the assessment and the schedules were signed by him.

146 Mr. LANDIS: I again object to this testimony because it is a matter of public record in a public office in McHenry County and they should have brought those records as I have brought them here to prove these facts that I want to prove.

The COURT: I presume the record is destroyed.

Mr. LANDIS: There is a record which is made from the schedules in the custody of the clerk which contains all this information. I presume the record is destroyed.

Mr. LANDIS: There is a record which is made from the schedules in the custody of the clerk which contains all this information. I submit it is not fair to do this thing.

Mr. DUPUY: I know of no such public record. I don't think any exists.

The COURT: If he knows the fact without going into details he may state it.

Mr. DUPUY: Do you know the fact about the making out of these schedules during these years? A. Yes, sir.

Q. Without going into detail, how many schedules were made out each year? A. One.

Q. You stated during the first three years they were made by Lewis Hatch and after that by Frank Hatch? A. Yes, sir.

Q. Do you know as a matter of fact who paid the taxes on them? A. I don't know anything about the taxes.

Q. What property was covered by these schedules? A. All that was on the farm I suppose.

147 Q. Do you mean property in the house of Lewis Hatch as well as that in the house of Frank Hatch? A. Yes, sir.

Testimony of Robert Thompson (recalled).

Q. During those several years? A. Yes, sir.
Q. Silverware, furniture and so forth? A. Yes, sir.

Cross-Examination by Mr. Landis.

Q. All put in one schedule? A. Yes, sir.
Q. Frank's was put in with his father's? A. So much household furniture; no division at all.
Q. Some years Franks, some years his father? A. The first three years that I assessed the town the old gentleman gave in the assessment and the other six years Frank made it.
Q. The last six years? A. Yes, sir.

(Mr. Dupuy offered in evidence tax receipts).

Mr. DUPUY: I will prove by Lewis Hatch that that is the tax receipt of the collector.

The COURT: You can prove by him that he paid those taxes if you want to. That is better than the receipt.

Testimony of Lewis Hatch (recalled.)

LEWIS HATCH was recalled and examined by Mr. Dupuy as follows:

Q. Look at the receipts which I now show you, being for the taxes of 1889, on personal property, Township 46, Range 9, and say whether you paid those taxes? A. I think I did.

Mr. DUPUY: I introduce the receipt in evidence.

Mr. LANDIS: I will not object to it for the reason that it does
148 not make any difference.

The receipt was marked "Exhibit J. L. B."

The petitioner's counsel thereupon rested.

L. B. Receipt.

STATE OF ILLINOIS, } ss.
McHENRY COUNTY. }

COLLECTOR'S OFFICE, BURTON, Mch. 8, 1890.

Received of Lewis Hatch

JOHN NETT, *Collector.*

the sum of Ninety-five $\frac{01}{100}$ Dollars, in full for the following State, County, Town and Special Taxes, for the year 1889, on the following described Real Estate and Personal Property, situated in Township No. 46, Range No. 9 East, to wit:

No. 17.

DESCRIPTION:	Page	Section / Lots	Acres / Block	Equal'd. Val. by St. B'rd.	State Tax D.	State Tax C.	C'nty Tax D.	C'nty Tax C.	Town Tax D.	Town Tax C.	Road and Br'ge Tax D.	Road and Br'ge Tax C.	Road Tax D.	Road Tax C.	D'st. Sch Tax D.	D'st. Sch Tax C.	Corp. Tax D.	Corp. Tax C.	Dog Tax D.	Dog Tax C.	Back Tax D.	Back Tax C.	Total Tax D.	Total Tax C.
[illegible] W. ¼ N. E. ¼.....	2	8	40	368	1	40		85				81			2	43							5	49
[illegible] ¼ S. W. ¼.....	2	8	80	770	2	93	1	77			1	69			5	08							11	47
[illegible] E. ¼ S. W. ¼.....	2	8	40	394	1	50		91				87			2	60							5	88
[illegible] of Rd. W. ft. S. ¼ S. E. ¼.....	2	8	22	219		83		50				48			1	45							3	26
[illegible] ¼ S. E. ¼.....	2	8	80	963	3	66	2	21			2	12			6	36							14	35
[illegible] N. E. ¼ N. W. ¼..	5	30	15	122		46		28				27				90							1	91
[illegible] Pt. W. ¼ N. W. ¼..	5	30	54	482	1	83	1	11			1	06			3	57							7	57
[illegible]rsonal Property...	14			3025	11	50	6	96			6	66			19	96							45	08
																							95	01

JOHN NETT, *Collector.*

Exhibit J. L. B.

Bill of Exceptions.

149 And thereupon the Respondent, by his counsel, submitted the following motion in writing:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.

IN THE DISTRICT COURT OF THE UNITED STATES, WITHIN AND FOR SAID DISTRICT AND DIVISION.

Joseph G. Heim, Receiver of The First National Bank of South Bend,
vs.
Frank W. Hatch.
No. 9085.

Motion to Instruct J

In the matter of the intervening petition of Lewis Hatch, trial of the right of property.

And now at the close of the petitioner's evidence comes the respondent, by Kenesaw M. Landis, his attorney, and moves the court to exclude the petitioner's evidence and to give to the jury the following instruction, to-wit:

The court instructs the jury to return a verdict against the petitioner and in favor of the respondent, and that the property levied upon was the property of Frank W. Hatch at the time the levy was made.

KENESAW M. LANDIS,
Atty. for Respondent.

(Which motion of Respondent the court overruled, to which ruling of the court the Respondent by his counsel then and there excepted.)

150 The counsel for the respondent introduced the following evidence:

Exhibits Offere In Eviden

The return of Lewis Hatch of personal property for taxation in Town of Burton, School District No. 2, Township 46, Range 9, McHenry County, Illinois, on the 15th day of June, 1897.

(Objected to by Mr. Dupuy because it appears the schedule was not sworn to as a schedule of property; on the further ground that it is not competent evidence because the language of it is, "Is owned or controlled by" blank. It does not say who, and it is not competent to prove either who owned it or who controlled it with no name in the blank space, and that the evidence is immaterial; objection overruled.)

151 Mr. Landis proposed to read from the back of the schedul
what purported to be an extract from the law of the state
To which Mr. Dupuy objected, and the objection was sustained
Exception by counsel for Respondent.

Respondent's counsel also offered in evidence personal property
tax return of F. W. Hatch, for the Town of Burton, School Dis
trict No. 2, Township 46, Range 9, McHenry County, Illinois, t
the introduction of which the Petitioner by his counsel objected fo
the reasons urged against admission of tax return of Lewis Hatch

(Objection overruled; exception by Petitioner's counsel.

152 And thereupon the petitioner, by his counsel, submitted th
following motion in writing:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.

IN THE DISTRICT COURT OF THE UNITED STATES, WITHIN AND FOR
SAID DISTRICT AND DIVISION.

Joseph G. Heim, Receiver of The
First National Bank of South
Bend,
vs.
Frank W. Hatch.
No. 9085.

t Jury. In the matter of the intervening petition of Lewis Hatch, tri
of the right of proporty.

And now at the close of all the evidence comes the petitioner
by George A. Dupuy, his attorney, and moves the court on th
evidence, to give to the jury the following instruction, to-wit:

The court instructs the jury to return a verdict against th
respondent, and in favor of the petitioner, and that the propert
levied upon was the property of Lewis W. Hatch, at the time th
levy was made, and not the property of Frank W. Hatch.

GEORGE A. DUPUY,
Atty. for Petitioner.

(Which motion of petitioner the court overruled, to which
ruling of the court the petitioner, by his counsel, then and
there excepted.)

See Assessor's Notice on the Filing of this Sheet.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

153 And thereupon the Respondent, by his counsel, submitted the following motion in writing: Motion to Instruct

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.

IN THE DISTRICT COURT OF THE UNITED STATES, WITHIN AND FOR SAID DISTRICT AND DIVISION.

Joseph G. Heim, Receiver of
The First National Bank of South Bend,
vs.
Frank W. Hatch.
No. 9085.

In the matter of the intervening petition of Lewis Hatch, trial of the right of property.

And now at the close of all the evidence comes the Respondent, by Kenesaw M. Landis, his attorney and moves the court to exclude all the evidence and to give to the jury the following instruction, to-wit:

The court instructs the jury to return a verdict against the petitioner and in favor of the Respondent and that the property levied upon was the property of Frank W. Hatch at the time the levy was made.

KENESAW M. LANDIS,
Atty. for Respondent.

(Which motion of respondent the court overruled; to which ruling of the court the respondent by his counsel then and there excepted.)

154 Whereupon after argument of the counsel the court instructed the jury as follows:

Gentlemen of the jury, I have been asked by counsel on either side to give you the law of the case from the respective standpoints occupied by counsel, and do so in the language in which the request has been made, largely. As counsel have stated you are the judges of the evidence in this case and take the law from the court. The court would not invade your province nor have you any desire I feel sure to invade the province of the court. The court is responsible for the law and you for the facts. Charge to Jury.

In connection with requests which have been made, there is one which asks a construction of the 7th Section of the Statutes of Illinois in regard to loan or reservation of personal property for the space of five years, declaring such a proceeding fraudulent. I do not think that that section of the Illinois Statute applies to the facts of this particular case.

Mr. DUPUY: I have prepared an instruction as to my view of that, if there is any such instruction prepared by the other side.

The COURT: I was asked to instruct the jury on that and I have said that I think it inapplicable to the facts in this particular case, which will save any necessity of going again into the request.

The court instructs you, gentlemen of the jury, that by common law a party to a suit is not a competent witness to testify in his own behalf, but by the statute of the State of Illinois, and I may add by the law of the United States, such a party is now a competent witness.

155 In determining the weight, however, to be attached to the evidence of any such witness the jury have a right to take into consideration his interest in the outcome of the suit, and it is for the jury to determine from all the facts and circumstances shown at the trial, what weight they will attach to the evidence of such witness.

The credit of a witness may be impeached by proof that he has made statements out of court contrary to what he has testified on the trial and if the jury believe from the evidence that the witness Lewis Hatch has made statements out of court to the assessor, with whom it was his duty to list his personal property for taxation, and the jury believe from the evidence that such statements, if any were made, were contrary to what he has sworn to upon the trial upon any material matter, then the contradictory statement would tend to impeach the witness and the jury would be justified in rejecting his testimony if, from all the other evidence in the case they believe such testimony to be untrue, except in so far as it has been corroborated by other witnesses or by the facts and circumstances proved on the trial.

The credit of a witness my be impeached by proving that he has made statements out of court contrary to what he has testified on the trial and if the jury believe from the evidence that the witness, Frank W. Hatch, has made statements out of court to the assessor with whom it was his duty to list his personal property for taxation, and the jury believe from the evidence that such statements, if any were made, are contrary to what he has sworn to upon the trial upon any material matter, then the contradictory state-

156 ments would tend to impeach the witness and the jury would be justified in rejecting his testimony if, from all the other evidence in the case they believe such statements to be untrue, except in so far as it has been corroborated by other credible evidence or by the facts and circumstances shown on the trial.

The law presumes that a public officer in the discharge of his official duty has pursued the course pointed out by the statute until he contrary is shown, and in this case the court instructs you that the law presumes that the assesser with whom the lists introduced

in evidence were filed did his duty, and if you believe from the evidence that such assessor has certified that the oath was administered to the person signing the list, the law presumes, wthout further proof, that such was administered, unless the contrary is shown by competent, reliable evidence or facts and circumstances shown on the trial. Charge to Jury.

By the statute of the State of Illinois all persons are required to list property in their possession on behalf of the owner for taxation. When they are required to list such property it is their duty to list it separately from their own, specifying in each case the name of the person, company or corporation to whom it belongs.

If you believe from the evidence that any witness has been successfully impeached on this trial, or that he willfully has sworn falsely as to any matter or thing material to the issue in this case, then the jury are at liberty to disregard his entire testimony, except in so far as it has been corroborated by other credible evidence or by facts and circumstances proven on the trial.

157 In passing upon the testimony of any witness for the petitioner, the jury has a right to take into consideration any interest such witness may feel in the result of this suit, if any is proved, growing out of his relation to the petitioner or otherwise, and to give to the testimony of such witness only such weight as they think it entitled to under all the circumstances proven on the trial.

When the genuineness of a signature to an instrument is established it affords *prima facie* evidence that the contents of the instrument were known to the subscriber and that it is his act, and in this case if the jury believe from the evidence that the two tax schedules introduced in evidence were signed by the parties whose names are attached thereto, it affords *prima facie* evidence that the contents of the said schedules were known to the said subscribers and that the same were made out as their own act.

The court instructs the jury that the burden of proving all of the material allegations of his petition rests upon the petitioner in this case and if the jury believe that the petitioner has failed to prove all the material allegations of his petition by the greater weight or preponderance of evidence, or if the jury believe that the evidence is evenly balanced as to any material allegation of the petitioner's petition, then they must find the issues against the petitioner.

The court instructs the jury that it is its special province to determine from the evidence what facts are or are not thereby established and in this regard the jury are to be guided by their own judgment and not by the instructions of the court—that is, as

158 to the facts in the case—the evidence. And the court further charges the jury that it is the duty of the court to instruct the jury

as to what is the law applicable to such facts as may be found by the jury and it is the duty of the jury to receive the statements of the law from the court and to apply the same to the facts which may be found by them.

If you believe from the evidence the arrangement between Lewis Hatch and Frank W. Hatch under which the farm was operated and carried on was substantially such as has been testified to by the said Lewis Hatch and Frank Hatch, then the natural and reasonable construction of the arrangement, as testified to by the said Lewis Hatch and Frank Hatch, as existing between the said Lewis Hatch and Frank Hatch, did not have the effect in law to vest the title of any of the property or the proceeds of the farm in Frank W. Hatch, although Frank W. Hatch may have had the power to sell the same to others without any further authority from his father.

You are instructed that if you believe the arrangement and agreement between the parties in relation to the carrying on of the farm was in accordance with the testimony of the said Lewis Hatch on this point, then you should find a verdict in favor of said Lewis Hatch, the petitioner.

It was not necessary that Lewis Hatch, in order to protect his rights in this property, should assert dominion or in any way interfere with the visible possession and control of Frank W. Hatch. The relation between them, as shown by the evidence in this cause,

was not that of landlord and tenant, but was more like that of 159 master and servant; that the possession of the son, Frank W. Hatch, being necessary to the performance of the service contemplated by the arrangement between them, and such possession being determinable at any time at the will of either party, the relation between them was not a tenancy, but the possession of Frank W. Hatch was the possession of a servant; that the possession of Frank W. Hatch, both of the farm and also of the farm products and other property, as well as the implements and live stock brought upon the place in pursuance of the arrangement, as part of the farm equipment, was the possession of the father, and that consequently the title to the property and the possession thereof both remained at all times in Lewis Hatch.

The jury are, therefore, instructed to return a verdict in favor of the petitioner, Lewis Hatch, if they believe that the arrangement existing between the said Frank W. Hatch and Lewis Hatch under which said farm was carried on and operated was substantially as testified to by Lewis Hatch during his examination upon that point. Any one circumstanced as was Lewis Hatch at the time the arrangement was made, about which he has testified in this

case, had the right to make such an arrangement as he has testified to in the evidence in this case with a son, or with any one whom he should choose, and that such right is an important right, which is not inconsistent with any principle of public policy, and which is not forbidden by any precept of the law, and the court charges the jury that even if Lewis Hatch had gone away instead of remaining upon the farm exercising some share of control, that he would have the right, upon returning, to assert title to the unsold property
160 remaining upon the farm, whether the same consisted of the the increase in the property or of the other property bought to supply the place of that which was there when he put his son or other party in control. Charge to Jury.

In considering the testimony in the case, the evidence afforded by the tax schedules should be regarded with caution, and the same should be considered as not necessarily contradicting or impeaching the other testimony concerning the relation and agreements existing between Lewis Hatch and Frank W. Hatch. The informalities usually attending the making of such papers, the incompleteness of the schedules in evidence, and especially the fact that it was the duty of Frank W. Hatch to pay the taxes under the arrangement shown to exist between himself and his father, should all be taken into consideration.

This is, in effect, a suit to try the title of the property which was levied on by the execution, whether it was in the defendant, Frank W. Hatch, or whether it was at the time of the seizure in the petitioner, Lewis Hatch, and therefore your verdict will be in one or the other of the following forms:

We, the jury, find the property subject to the execution, or we, the jury, find the right to the property in the claimant, Lewis Hatch.

You can go with an officer to your jury room and make a verdict.

Mr. DUPUY: Isn't it customary that the court should allow the jury to take the instructions?

The COURT: I never send them out to the jury. It is the duty of the jury to pay attention, and they no doubt did. If
161 there is a misunderstanding, and they come to the court, they can, in the presence of counsel, have further instructions.

Jury. To specific parts and portions of which charge to the jury the respondent, by his counsel, then and there excepted. The parts of said charge to which said respondent, by his counsel, excepted, and his exceptions thereto, are more specifically set forth as follows:

The Court erred in using the following language in the charge to the jury:

(a) "If you believe from the evidence the arrangement between Lewis Hatch and Frank W. Hatch, under which the farm "was operated and carried on, was substantially such as has been "testified to by the said Lewis Hatch and Frank W. Hatch, then "the natural and reasonable construction of the arrangement as "testified to by the said Lewis Hatch and Frank W. Hatch, as existing between them, the said Lewis Hatch and Frank W. Hatch, "did not have the effect in law to vest the title of any of the property or of the proceeds of the farm in Frank W. Hatch, although "said Frank W. Hatch may have had the power to sell the same to "others without any further authority from his father. You are "instructed that if you believe the arrangement and agreement between the parties in relation to the carrying on of the farm was "in accordance with the testimony of the said Lewis Hatch on this "point, then you should find a verdict in favor of the said Lewis "Hatch, the petitioner."

(To which portion of said charge the respondent, by his counsel, at the time excepted.)

162 The court erred in using the following language in the charge to the jury:

(b) "It was not necessary that Lewis Hatch, in order to protect his rights in this property, should assert dominion, or in any "way interfere with the visible possession and control of Frank W. "Hatch; the relation between them, as shown by the evidence in "this cause, was not that of landlord and tenant, but was more like "that of master and servant; that the possession of the son, Frank "W. Hatch, being necessary to the performance of the service contemplated by the arrangement between them and such possession "being determined at any time at the will of either party, the relation between them was not a tenency, but the possession of "Frank W. Hatch was the possession of a servant; that the possession of Frank W. Hatch, both of the farm and also of the farm "products and other property, as well as of implements or live "stock brought upon the place in pursuance of the arrangement, as "part of the farm equipment, was the possession of the father and "that consequently the title to the property and the possession "thereof both remained at all times in Lewis Hatch. The jury are "therefore instructed to return a verdict in favor of the petitioner,

" Lewis Hatch, if they believe that the arrangement existing be-
" tween the said Frank W. Hatch and Lewis Hatch, under which
" said farm was carried on and operated, was substantially as testi-
" fied to by Lewis Hatch during his examination upon that point."

(To which portion of said charge the respondent, by his counsel, at the time excepted.)

163 The court erred in using the following language in the charge to the jury:

(c) " Any one circumstanced as was Lewis Hatch at the time
" the arrangement was made about which he has testified in this
" case, had the right to made such an arrangement as he has testified
" to in the evidence in this case, with a son, or with anyone whom
" he should choose, and such right is an important right which is
" not inconsistent with any principle of public policy, and which is
" not forbidden by any precept of the law. And the court charges
" the jury that even if Lewis Hatch had gone away, instead of re-
" maining upon the farm and exercising some measure of control,
" that he would have the right, upon returning, to assert title to
" the unsold property remaining upon the farm, whether the same
" consisted of the increase in the property of property bought to
" supply the place of that which was there when he put his son or
" other party in control."

(To which portion of said charge the respondent, by his counsel, at the time excepted.)

The court erred in using the following language in the charge to the jury:

(d) "In considering the testimony in the case, the evidence
" afforded by the tax schedules should be regarded with caution, and
" the same should be considered as not necessarily contradicting or
" impeaching the other testimony concerning the relation and agree-
" ments existing between Lewis Hatch and Frank W. Hatch; the
" informalities usually attending the making of such papers, the in-
" completeness of the schedules in evidence, and especially the fact
" that it was the duty of Frank W. Hatch to pay the taxes
164 under the arrangement shown to exist between himself and his
" father, should all be taken into consideration."

(To which portion of said charge the respondent, by his counsel, at the time excepted.)

The court erred in refusing to give to the jury the following instructions requested in writing by the respondent:

(a) "The court instructs the jury that when a man delivers
" personal property to another man, under a contract which pro-
" vides that the person to whom such personal property is turned
" over is at liberty to deliver to the person so turning over said per-
" sonal property other property of like kind and equal in value,

Jury. "then the title to the property so delivered passes to the person so "receiving said personal property; and if the jury believe from "the evidence that the petitioner, Lewis Hatch, and the judg- "ment debtor, Frank W. Hatch, entered into a contract which "provided that the farm personalty on the Lewis Hatch farm "should be delivered by Lewis Hatch, to Frank W. Hatch, "and that such contract further provided that Frank W. Hatch "need not return to Lewis Hatch the same specific articles of "property, but that Frank W. Hatch was at liberty under said "contract to deliver to the said Lewis Hatch other personal prop- "erty of like kind and equal in value to that to be delivered by the "said Lewis Hatch to the said Frank W. Hatch and you further "believe from the evidence that under said contract the farm per- "sonalty on the Lewis Hatch farm was delivered by the said Lewis "Hatch to the said Frank W. Hatch, and that said contract was in "force between the said Lewis Hatch and the said Frank W. Hatch "at the time of the levy of the execution in the case of Joseph G. "Heim, receiver of The First National Bank of South Bend vs. "Frank W. Hatch, then you should find by your verdict that the "property levied upon was the property of Frank W. Hatch and "liable to seizure under said execution."

165 (To which refusal of the court to so instruct the jury the respondent, by his counsel, at the time excepted.)

The court erred in refusing to give to the jury the following instructions requested by the respondent in writing:

(b) "The court instructs the jury that it was the duty of "Frank W. Hatch to list for taxation all property in his possession "belonging to Lewis Hatch, if the jury believe from the evidence "that said Frank W. Hatch had in his possession any property be- "longing to said Lewis Hatch; that it was also the duty of Frank "W. Hatch, in case you believe from the evidence that he was re- "quired to list any property of the said Lewis Hatch for taxation, "to list the same in the name of said Lewis Hatch and not in his "own name."

(To which refusal of the court to so instruct the jury the respondent, at the time, by his counsel, excepted.)

At the conclusion of the charge of the court the jury retired to consider its verdict and subsequently brought into court a verdict in favor of the petitioner. the said Lewis Hatch, and finding that the property at the time of the levy of the execution was the property of the said petitioner, Lewis Hatch.

The respondent thereupon made and entered a motion for a new trial, said motion being as follows:

Motion for new trial omitted.

And now comes the respondent, by Kenesaw M. Landis, his attorney, and moves the court to set aside the verdict herein and to grant a new trial.

Judgment

Whereupon the respondent made and entered a motion in arrest of judgment, but the court overruled and denied the same and entered judgment in favor of the said petitioner, Lewis Hatch, and against the respondent, to which the respondent then and there excepted.

And forasmuch as the matters set forth do not fully appear of record, the respondent tenders his bill of exceptions and prays that the same may be signed and sealed by the Judge of said Court, pursuant to law; which is done accordingly this 16th day of July, A. D. 1898.

167 WILLIAM J. ALLEN,
Judge.

O. K. .....
Attorney for Petitioner.

O. K. KENESAW M. LANDIS,
Attorney for Respondent.

Protest of Petitioner

I am satisfied that such is the case and hereby admit that the foregoing is a true and correct transcript of record of the proceedings upon the trial of this cause, but I protest against the length of the certificate of evidence and hereby reserve the right to object to any possible payment by petitioner of the costs thereby occasioned in case of a reversal.

GEORGE A. DUPUY,
Attorney for Petitioner Lewis Hatch.

July 15, 1898.

Endorsed:

Bill of Exceptions. Filed July 26th, A. D. 1898. T. C. MacMillan, *Clerk.*

168 UNITED STATES OF AMERICA. } ss.

The President of the United States, to the Honorable the Judges of the District Court of the United States for the Northern District of Illinois—GREETING:

Writ of Error.

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between John W. Arnold, respondent, and Lewis Hatch, in the matter of the trial of the right of property under the intervening petition of Lewis Hatch, filed in the suit of Joseph G. Heim, Receiver of the First National Bank of South Bend, against Frank W. Hatch, in said District Court of the United States for the Northern District of Illinois, a manifest error hath happened, to the great damage of the said John W. Arnold, as by

or. his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Seventh Circuit may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

T. C. MacMillan,
Clerk of the District Court of the United States for the Northern District of Illinois.

Allowed by
P. S. Grosscup,
Judge.

Northern District of Illinois } ss.

In obedience to the within writ, I herewith transmit to the Error. United States Circuit Court of Appeals for the Seventh Circuit, a true and complete transcript of the record and proceedings in the foregoing entitled cause this 15th day of August, A. D. 1898.

T. C. MacMillan,
Clerk United States District Court, Northern District of Illinois.
Endorsed: Filed July 26, 1898. T. C. MacMillan, Clerk.

169 Northern District of Illinois, } ss.
Northern Division.

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the proceedings had in this court in the case entitled Joseph G. Heim, Receiver *vs.* Grank W. Hatch, Defendant, Lewis Hatch, Claimant,

prepared in accordance with the præcipe of the attorney for said Joseph G. Heim, Receiver.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Chicago, in said District, this 15th day of August, A. D. 1898. [SEAL]

T. C. MacMillan, *Clerk*,
By C. R. Pickard, *Deputy Clerk*.

170 United States of America. } ss.

The President of the United States, to Lewis Hatch—Greeting: Citation.

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit to be holden at Chicago within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, wherein John W. Arnold is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable P. S. Grosscup, Judge of the District Court of the United States this 26th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

P. S. Grosscup,
District Judge.

Service of above is accepted this 26th day of July, A. D. 1898.

George A. Dupuy,
Attorney for Defendant in Error.

Endorsed: Filed July 26, 1898.
T. C. MacMillan, Clerk.

112 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on Monday, the fourth day of October, 1897, in the October term, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-second.

And afterwards, to wit, on the twenty-third day of August, 1898, in the October term aforesaid, came the plaintiff in error, by his counsel, Mr. Kenesaw M. Landis, and filed in the office of the clerk of said court his appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1897.

JOHN W. ARNOLD, Plaintiff in Error,
vs.
LEWIS HATCH, Defendant in Error. } No. 540.

113 The clerk will enter my appearance as counsel for the plaintiff in error.

KENESAW M. LANDIS.

NOTE.—Must be signed by a member of the bar of the United States circuit court of appeals for the seventh circuit. Individual and not firm names must be signed.

Endorsed: Filed Aug. 23, 1898. Oliver T. Morton, clerk.

And afterwards, to wit, on the twenty-fourth day of August, 1898, in the October term aforesaid, came the defendant in error, by his counsel, Mr. George A. Dupuy, and filed in the office of the clerk of said court his appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1897.

JOHN W. ARNOLD, Plaintiff in Error,
vs.
LEWIS HATCH. } No. 540.

The clerk will enter our appearance as counsel for the defendant in error.

RUBENS, DUPUY & FISCHER.
GEO. A. DUPUY.

NOTE.—Must be signed by a member of the bar of the United States circuit court of appeals for the seventh circuit. Individual and not firm names must be signed.

Endorsed: Filed Aug. 24, 1898. Oliver T. Morton, clerk.

114 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on the third day of October, 1898, in the October term, in the year of our Lord one thousand eight hundred and ninety-eight, and in the year of our Independence the one hundred and twenty-third.

And afterwards, to wit, on the third day of October, 1898, in the October term last aforesaid, in the record of proceedings thereof in said entitled cause, appears the following entry, to wit:

MONDAY, *October* 3, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

JOHN W. ARNOLD
vs.
LEWIS HATCH. } 540.

In error to the district court of the United States for the northern district of Illinois.

It is now here ordered that this cause be, and the same is hereby, set down for hearing Monday, October 17, 1898.

115 And afterwards, to wit, on the seventeenth day of October, 1898, in the October term last aforesaid, came the defendant in error, by his attorney, Mr. George A. Dupuy, and filed in the office of the clerk of said court a motion suggesting diminution of the record, said motion being in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1897.

JOHN W. ARNOLD, Plaintiff in Error,
vs.
LEWIS HATCH, Defendant in Error.

Now comes the defendant in error, Lewis Hatch, by George A. Dupuy, his attorney, and suggests the diminution of the record in said cause filed in this court and asks leave of court to file a supplemental record and for leave to cause the printed transcript filed herein to be corrected accordingly.

GEORGE A. DUPUY,
Att'y for Def't in Error.

Endorsed: Filed Nov. 17, 1898. Oliver T. Morton, clerk.

116 And afterwards, on the same day, to wit, on the seventeenth day of October, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *October* 17, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

JOHN W. ARNOLD
vs. } 540.
LEWIS HATCH.

In error to the district court of the United States for the northern district of Illinois.

On motion of George A. Dupuy, attorney for defendant in error, Lewis Hatch, counsel for plaintiff in error consenting thereto, it is hereby ordered that leave be and is hereby given to the defendant in error to file herein a supplemental transcript of record, and also to correct the printed transcript heretofore filed herein, and that the same be and is hereby made a part of the record in this cause in this court.

117 And afterwards, on the same day, to wit, on the seventeenth day of October, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *October* 17, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

JOHN W. ARNOLD
vs. } 540.
LEWIS HATCH.

In error to the district court of the United States for the northern district of Illinois.

Now, this day, come the parties, by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. K. M. Landis, counsel for plaintiff in error, and by Mr. George A. Dupuy, counsel for defendant in error, and the court, having heard the same, takes this matter under advisement.

And afterwards, to wit, on the eighteenth day of October, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

118 TUESDAY, *October* 18, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

JOHN W. ARNOLD
vs. } 540.
LEWIS HATCH.

In error to the circuit court of the United States for the northern district of Illinois.

On stipulation of parties, made in open court, it is made to appear that the certified transcript of record filed in this cause is incomplete in failing to show the postmark of a certain envelope which was introduced in evidence upon the trial of this cause in the district court, an incomplete copy of which is contained in the printed transcript, on page 69.

And on like stipulation it is ordered that the record in said cause be amended by showing the postmark on said envelope to have been "Paris, Tex., May 6, 12 m., 1887, rec'd."

And it is further ordered that the printed transcripts of said record be amended to correspond with said record as amended.

O K.

K. M. LANDIS,
Att'y for Pl't'ff in Error.
G. A. DUPUY,
Att'y for Def't in Error.

119 And afterwards, to wit, on the twenty-fourth day of October, 1898, in the October term last aforesaid, there was filed in the office of the clerk of said court the opinion of the court in said cause, said opinion being in the words and figures following, to wit:

120 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1898.

JOHN W. ARNOLD, Plaintiff in Error,
vs.
LEWIS HATCH.
} No. 540. Error to the District Court of the United States for the Northern District of Illinois.

Per Curiam:

This case was before this court at the last term, under the title of Hatch *vs.* Heim, 46 U. S. App., 544, and the judgment was then reversed and a new trial directed. The case now comes before us upon a writ of error from the judgment entered upon a retrial of the action in favor of the present defendant in error. Error is assigned only upon the instructions of the court. The charge accords fully with the principles declared in our previous decision.

The judgment is affirmed.

121 And afterwards, on the same day, to wit, on the twenty-fourth day of October, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *October* 24, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

JOHN W. ARNOLD
vs. } 540.
LEWIS HATCH.

In error to the district court of the United States for the northern district of Illinois.

This cause came on to be heard on the transcript of the record from the district court of the United States for the northern district of Illinois and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby, affirmed with costs.

122 And afterwards, to wit, on the fourteenth day of December, 1898, in the October term last aforesaid, came the plaintiff in error by his counsel, Mr. Kenesaw M. Landis, and filed in the office of the clerk of said court his petition for writ of error, said petition being in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1898.

JOHN W. ARNOLD, Plaintiff in Error,
vs. } No. 540.
LEWIS HATCH, Defendant in Error.

The above-named plaintiff in error, John W. Arnold, conceiving himself aggrieved by the order entered on the 24th day of October, A. D. 1898, in the above-entitled proceeding, doth hereby pray that a writ of error may issue in said cause, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be transmitted to the Supreme Court of the United States.

KENESAW M. LANDIS,
Counsel for Plaintiff in Error, John W. Arnold.

123 Writ allowed as prayed.

W. A. WOODS,
U. S. Circuit Judge.
JAS. G. JENKINS,
U. S. Circuit Judge.

12, 8, '98.

Endorsed: Filed December 14, 1898. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the fourteenth day of December, 1898, came the plaintiff in error, by his counsel, Mr. Kenesaw M. Landis, and filed in the office of the clerk of said court his assignment of errors, said assignment of errors being in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1898.

JOHN W. ARNOLD, Plaintiff in Error,
vs.
LEWIS HATCH, Defendant in Error. } 540.

And now comes the plaintiff in error, by Kenesaw M. Landis, his attorney, and says that in the record and proceedings of the
124 United States circuit court of appeals for the seventh circuit in the above-entitled cause manifest error hath intervened to the prejudice of said plaintiff in error, in this:

First. The United States circuit court of appeals for the seventh circuit erred in affirming the judgment of the district court of the United States for the northern district of Illinois, northern division.

Second. The United States circuit court of appeals for the seventh circuit erred in not reversing the judgment of the district court of the United States for the northern — of Illinois, northern division.

Wherefore, for these and other reasons apparent in the record, the plaintiff in error prays that the judgment of the United States circuit court of appeals for the seventh circuit may be reversed, etc.

KENESAW M. LANDIS,
Attorney for Plaintiff in Error.

Endorsed: Filed December 14, 1898. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the fourteenth day of December, 1898, came the plaintiff in error, by his counsel, Mr. Kenesaw M. Landis, and filed in the office of the clerk of said court his bond, said bond being in the words and figures following, to wit:

125 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1898.

JOHN W. ARNOLD, Plaintiff in Error,
vs.
LEWIS HATCH, Defendant in Error. } No. 540.

Know all men by these presents that we, John W. Arnold and Samuel M. Nickerson, both of the city of Chicago, county of Cook and State of Illinois, are held and firmly bound unto the above-named Lewis Hatch, his heirs, executors, and administrators, in the sum of six thousand (6,000) dollars, to be paid to the said Lewis Hatch, his heirs, executors, or administrators; for the payment of which, well and truly to be made, we bind ourselves and each of

us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of November, A. D. 1898.

Whereas the above-named John W. Arnold has prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered against the said John W. Arnold and in favor of the said Lewis Hatch in the above-entitled suit: Now, therefore,

126 the condition of this obligation is such that if the said John W. Arnold shall prosecute the said writ of error to effect and answer all damages that may be sustained by the said Lewis Hatch, or his heirs, executors, or administrators, by reason of the prosecution of said writ of error, and pay all costs if he fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force.

JOHN W. ARNOLD. [SEAL.]
SAMUEL W. NICKERSON. [SEAL.]

This bond to operate as a supersedeas.

Approved:
GEORGE A. DUPUY,
Att'y for Hatch, Def't in Error.
KENESAW M. LANDIS,
Att'y for Plaintiff in Error.

Approved:
WM. A. WOODS,
U. S. Circuit Judge.
JAS. G. JENKINS,
U. S. Circuit Judge.

Endorsed: Filed Dec. 14, 1898. Edward M. Holloway, clerk.

127 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 126, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit in the case of John W. Arnold, plaintiff in error, *vs.* Lewis Hatch, defendant in error, No. 540, October term, 1897, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 22nd day of December, A. D. 1898.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

128 UNITED STATES OF AMERICA, *ss:*

To Lewis Hatch, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the seventh circuit, wherein John W. Arnold is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William A. Woods this tenth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

WILLIAM A. WOODS,
Presiding Judge.

Service of above citation accepted this seventeenth day of December, A. D. 1898.

LEWIS HATCH,
Def't in Error,
By GEO. A. DUPUY, *His Att'y.*

129 [Endorsed:] Supreme Court of the United States. —— —— *vs.* —— ——. Citation. Filed Dec. 17, 1898. Edward M. Holloway, clerk.

130 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a cause which is in the said United States circuit court of appeals for the seventh circuit, before you, between John W. Arnold, plaintiff in error, and Lewis Hatch, defendant in error, a manifest error hath happened, to the great damage of the said John W. Arnold, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court of the United States within thirty days from the date hereof, that, the record and
131 proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal United States Circuit Court of Appeals, Seventh Circuit.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fourteenth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Allowed by—
WM. A. WOODS,
Presiding Judge.

UNITED STATES OF AMERICA, *ss:*

In obedience to the within writ, I herewith transmit to the United States circuit court of appeals for the seventh circuit a true and complete transcript of the record and proceedings in the foregoing-entitled cause this fourteenth day of December, A. D. 1898.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk United States Circuit Court of Appeals for the Seventh Circuit.

132 [Endorsed:] Supreme Court of the United States. John W. Arnold, plaintiff in error, *vs.* Lewis Hatch, defendant in error. Writ of error. Filed Dec. 14, 1898. Edward M. Holloway, clerk. Copy deposited for the plaintiff in error in the clerk's office of the United States circuit court of appeals for the seventh circuit.

Endorsed on cover: Case No. 17,251. U. S. C. C. of appeals, 7th circuit. Term No., 666. John W. Arnold, plaintiff in error, *vs.* Lewis Hatch. Filed January 7, 1899.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

No. 183.

JOHN W. ARNOLD,
Plaintiff in Error,

vs.

LEWIS HATCH,
Defendant in Error.

In Error to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

At the July term, 1897, of the District Court of the United States for the Northern District of Illinois, in the case of Joseph G. Heim, *Receiver of the First National Bank of South Bend vs. Frank W. Hatch*, judgment was rendered against the defendant for the sum of $4,351.09.

(Rec., p. 7.) On August 21, 1897, the United States Marshal, acting under the authority of the execution, issued for the collection of this judgment, levied upon the following enumerated articles of personal property, which the officer found on a farm where the defendant in execution resided in School District No. 2, town of Burton, McHenry county, Illinois. (Rec., p. 9):

Six hundred sheep, forty-five milch cows, fifteen head of young stock, twenty horses, four stacks of oats, 150 tons of hay, eleven hogs, two mowers, one hay loader, four plows, three drags, three harrows, one seeder, one corn planter, one pulverizer, one roller, one tedder, one hay fork and tackle.

On September 1, 1897, *Lewis* Hatch, the defendant in error, filed his sworn petition in the District Court in the original action in which the judgment was rendered, claiming to be the absolute and sole owner of all the property levied upon, and praying the court to order the officer to release the levy. (Rec., pp. 9-10.) The plaintiff in error filed an answer, traversing the petitioner's allegations of ownership and the issue as to right of property went to a jury for trial.

It may be observed here that this is the same controversy that was before the Court of Appeals for the Seventh Circuit at the October, 1897 term, under the title of *Lewis Hatch vs. Joseph G. Heim, receiver, etc.* There the Court of Appeals *reversed* the District Court judgment rendered on a verdict *sustaining* the levy (see opinion of the court, 86 Fed. Rep., 436), and remanded the cause. A new trial was had, resulting in a verdict and judgment against the levy and in favor of defendant in error (petitioner below).

When the record of this second trial was before the Court of Appeals, the errors assigned were the same as those presented here, namely, that the trial court erred in refusing to direct a verdict in favor of the levy and in instructions *given* and *refused*. But the trial court, having charged the jury in accordance with one of the two theories enunciated by the Court of Appeals in its first opinion above referred to (86 Fed. Rep., 436), the judgment was affirmed.

The two theories referred to (laid down in the 86 Fed. Rep., at page 436) as being the law of this case were:

1st. That the contract between the petitioner below (defendant in error) and his son (the execution debtor) with respect to the property levied upon, constituted the holding of the property a *bailment*, with the defendant in error, the bailor, and the execution debtor, the bailee.

2nd. That the same contract between the same parties, with respect to the same property, at the same time, also erected the parties into the relation of *master and servant*—the defendant in error being the master and the execution debtor being the servant.

Of course for these two adverse theories to apply to one posture of events would be a logical impossibility. The learned trial judge instructed the jury in harmony with theory number two. That *neither* of these two theories correctly stated the law of the case, and that the trial court gravely erred in instructions, both *given* and *refused*, will be apparent to your Honors from the following

STATEMENT OF FACTS.

Lewis Hatch, the defendant in error, is the father of *Frank* W. Hatch, the execution debtor. In 1883 Hatch, senior, who then (and for about twenty-five years prior thereto had) resided on and operated the farm where the property was seized by the marshal (desiring to go out of the farming busines), made a contract with Hatch, junior, providing that the latter should take the farm, with the farm personalty, and operate it. It was further stipulated in this contract that the entire burden and responsibility was upon the the son. He was to keep up the farm, make all repairs, pay all taxes and other expenses, replace all implements as they wore out, and all stock as it got old. It was further stipulated that if at any time the contract was terminated (and either party was free to terminate the tenancy at will) *the son should turn back to his father the farm with implements, stock and other farm personalty of the same kind and amount as was on the farm when the father retired.* (Evidence of defendant in error, pp. 34-35-36.) "Everything was to be turned back in as good condition as he (the execution debtor) took them" (Rec., p. 35) and "if he (the execution debtor) *did not have the same to turn back to substitute it with other ones.*"

The defendant in error testified further this stipulation of the contract was made "with respect to all the stuff the defendant in error turned over to the execution debtor." (Rec., pp. 35-36).

In consideration of the burden and responsibility thus assumed by the execution debtor he was to have what he could make out of the farm, and in consideration of step-

ping aside and turning the farming business over to the son, the defendant in error was vested with a right *under the terms of the contract* (Rec., p. 35) to receive the farm back from the son (if the arrangement should ever terminate) *with implements, stock and other farm personalty equal in kind and amount to* that which was on the farm when the contract was made. The father continued to reside in the homestead and the son *at his own expense* built a residence on the farm for the occupancy of himself and family.

This contract was in force at the time the levy was made. During the life of the arrangement Hatch junior made several prospecting trips to western states but (as the defendant in error testified) there was never any impairment of the agreement.

A further and somewhat detailed reference to the proof, it is believed, will conduce to a correct understanding of this case. On the second trial, *and after the Court of Appeals had given expression to the master and servant theory*, the defendant in error testified that:

"My son was *my manager*. * * * I had him en-"gaged for an *overseer boss*, or whatever you might call "him, *manager*, *agent*, whatever you might call him. He "was transacting *my business*. (Rec., p. 29.) All ex-"pense was to be paid out of the income of the farm. What "was left was his (the son's) *salary*."

And (on the second trial) being asked, on cross-examination, what responsibility he (the defendant in error) had, under the contract, with reference to the property levied upon, the witness said:

"I had the responsibilities of looking and seeing that "everything was taken care of. (Rec., p. 33.) Seeing

"whether the stock was *managed* as it should be; whether "he (the execution debtor) was *managing my business* in a "proper way; the responsibility of keeping up the personal "property was with the income of the farm. Frank, as "*my manager*, was to do it." (Rec., p. 34.)

On the second trial the defendant was asked, on cross-examination:

"Whether or not he (the execution debtor) should keep "up the stock, the farm implements and all the other per-"sonal property on the farm, and if ever he (the execution "debtor) left the farm he should turn over to you (the de-"fendant in error) the same number and value of property "that you turned over to him at that time (the beginning of "the arrangement.")

And in reply to this question the defendant in error said:

"Well, sir, *there was nothing of the kind specified.* But "the understanding was that he should not do, as a great "many had done, turn off everything and leave the farm. "but he should leave everything in running order as he "found it if he took a notion to go." * * * (Rec., p. 31.)

Fortunately for the rights of the plaintiff in error a stenographer was present at the first trial and wrote down the testfimony of the defendant in error. On the second trial this man admitted that on the former trial he gave the following evidence:

"Q. What was the arrangement with reference to "what Frank was to turn back to you?

"A. To turn back, as I said before, he was to keep the "stock in as good condition as he found it, and every-

"thing else on the farm. If the farming tools were out "they had to be replaced."

"Q. *He was to replace them with new ones?*

"A. *With new ones to supply their place; if the cows "got old he should turn them off and replace them with "new ones.*" (Rec., p. 32.) * * * *Everything* was to "be *turned back* in as good condition as he took them."

"Q. Or if he didn't have the same to turn back *to sub-"stitute it with other ones?*"

"A. *Certainly, that was the meaning of it; that was "what was understood about it.*"

"Q. I understood you to testify that was true with re-"spect to *all the stuff you turned over to him?*"

"A. Yes, sir." (Rec., p. 35.)

The execution debtor, Frank W. Hatch, testified as a witness for defendant in error. He said he was *supervising* the farm *for his father;* that he was in the *employ* of his father, and that he never *rented* the farm. (Rec., p. 50.) Being pressed on cross-examination (Rec., pp. 50-51), this man admitted that on the first trial of the case he stated that he had informed the marshal when the levy was made that he "*rented the farm;*" and that when he made this statement to the levying officer he (the execution debtor) thought "*he was a renter.*" (Rec., pp. 50-51.) And, further, this witness admitted that on the former trial he tastified that he also said to the levying officer that it was not an unusual thing for the *tenant* to pay the taxes. (Rec., p. 52.)

When your Honors come to consider the contract under which the father retired from business, and the son went into business, the above quoted statements made by the son (a graduate of a law school) at a time when the ques-

tion of *what must be done to save the property from marshal sale*, had not been made the subject of grave deliberation, will contribute substantially to the view that the relation of the defendant in error and execution debtor was not bailor and bailee nor master and servant; but that, clearly, the father (the *owner* of the *realty*) was the *landlord*, and the son, who had the possession and use of the farm, was the *tenant;* that it was a *tenancy at will*, the contract embodying the familiar and essential elements of such a tenancy; that the title to the personal property on the farm at the beginning of the tenancy, seventeen years before, passed to the son at that time; that the personal property levied upon (practically *all of which* was brought to the farm by the son *during the tenancy*), was the property of the son, liable to seizure in execution for his debts.

In further support of the contention of plaintiff in error that the son was the *tenant* of the farm, *and not the mere servant of his father* (as contended by defendant in error), the court's attention is invited to the statement of defendant in error's witness, Jones—a hired man on the farm—who testified (Rec., p. 91) that he was "*in the employ of Frank Hatch*" (the son); that the father had "complained" about the plowing of a certain field last year; that the same field was plowed the same way this year by the witness, "*who was ordered to do so by Frank W. Hatch*" (the pretended servant). This incident, trivial in itself, is important as showing who was the *master* on that farm.

Both father and son (speaking of the contract under which the business was turned over to the son) testified to practically the same agreement. And on the witness stand they both sought to give that agreement the same con-

struction, namely, that the *son* was the *servant* of the *father* in the business of running that farm.

In behalf of the plaintiff in error the tax schedules of personal property in *School District number two* were introduced in evidence. (Copies inserted at page 101 of Record.) One of these schedules was signed by *Lewis* Hatch, the father, purported to contain "a full, complete and correct schedule" of his personal property in *School District number two*, May 1, 1897, liable to taxation; *this schedule did not contain one single article of the kind levied upon;* the other schedule was made out by the son *Frank* W. Hatch, contained a list of the "numbers, amounts, quantity and quality of all personal property *belonging to Frank W. Hatch*" *in School District number two*, May 1, 1897, and included in detail, "horses, cattle, sheep, hogs, farm implements," etc., as per the levy.

At the close of the evidence of defendant in error, and again at the close of all of evidence, the plaintiff moved the court to direct a verdict in favor of the levy, which the court refused to do, and to which refusal the marshal saved his exception. (Rec., pp. 99-101.)

Thereupon, the plaintiff in error moved the court to give the jury the following instruction, which the court refused to do, and to which refusal the plaintiff in error duly excepted at the time:

"The court instructs the jury that when a man delivers "personal property to another man, under a contract which "provides that the person to whom such personal property "is turned over, is at liberty to deliver to the person so "turning over said personal property, other property of "like kind and equal in value, then the title to the property

"so delivered passes to the person so receiving said per-
"sonal property; and if the jury believe from the evidence,
"that the petitioner, Lewis Hatch, and the judgment
"debtor, Frank W. Hatch, entered into a contract which
"provided that the farm personalty on the Lewis Hatch
"farm should be delivered by Lewis Hatch to Frank W.
"Hatch, and that such contract further provided that Frank
"W. Hatch need not return to Lewis Hatch the same spe-
"cific articles of property, but that Frank W. Hatch was at
"liberty under said contract to deliver to said Lewis Hatch
"other personal property of like kind and equal in value to
"that to be delivered by the said Lewis Hatch to the said
"Frank W. Hatch, and you further believe from the evi-
"dence, that under said contract the farm personality on the
"Lewis Hatch farm was delivered by the said Lewis Hatch
"to the said Frank W. Hatch, and that said contract was in
"force between the said Lewis Hatch and the said Frank
"Frank W. Hatch at the time of the levy of the execution
"in the case of *Joseph G. Heim, Receiver of the First Na-
"tional Bank of South Bend, vs. Frank W. Hatch*, then you
"should find by your verdict that the property levied upon
"was the property of Frank W. Hatch, and liable to seizure
"under said execution." (Rec., pp. 107, 108.)

The court charged the jury that if you believe "from the evidence the arrangement between Lewis Hatch and Frank W. Hatch under which the farm was operated and carried on, was substantially as has been testified to by the said Lewis Hatch and Frank W. Hatch, then the natural and reasonable construction of the arrangement * * * did not have the effect in law to vest the title of any of the property or the proceeds of the farm in Frank W. Hatch * * * and you are instructed,

if you believe the arrangement and agreement between the parties in relation to the carrying on of the farm was in accordance with the testimony of the said Lewis Hatch on this point, then you should find a verdict in favor of the said Lewis Hatch, the petitioner." (Rec., p. 104.)

The jury were further charged that "Any one circum-"stanced as was Lewis Hatch at the time the arrangement "was made, about which he has testified in this case, had "the right to make such an arrangement as he has testified "to in the evidence in this case with a son, or with any one "whom he should choose, and that such right is an import-"ant right, which is not inconsistent with any principle of "public policy, and which is not forbidden by any precept "of the law, and the court charges the jury that even if "Lewis Hatch had gone away instead of remaining upon "the farm exercising some share of control that he would "have the right, upon returning, to assert title to the unsold "property remaining upon the farm, whether the same con-"sisted of the increase in the property or of the other "property bought to supply the place of that which was "there when he put his son or other party in control." (Rec., pp. 104-105.)

The jury were charged that "It was not necessary "that Lewis Hatch, in order to protect his "rights in this property, should assert dominion or "in any way interfere with the visible possession and con-"trol of Frank W. Hatch. The relations between them "as shown by the evidence in this cause, was not that of "landlord and tenant, but was more like that of master and "servant; that the possession of the son, Frank W. Hatch, "being necessary to the performance of the service con-"templated by the arrangement between them, and such

"possession being determinable at any time at the will of "either party, the relation between them was not a tenan- "cy, but the possession of Frank W. Hatch was the pos- "session of a servant; that the possession of Frank W. "Hatch, both of the farm and also of the farm products and "other property, as well as the implements and live stock "brought upon the place in pursuance of the arrangement, "as part of the farm equipment, was the possession of the "father, and that consequently the title to the property and "the possession thereof both remained at all times in Lewis "Hatch." (Rec., p. 104.)

And then the jury were instructed that:

"In considering the testimony in the case, the evidence "afforded by the tax schedules should be regarded with "caution, and the same should be considered as not neces- "sarily contradicting or impeaching the other testimony "concerning the relation and agreements existing between "Lewis Hatch and Frank W. Hatch. The informalities "usually attending the making of such papers, the incom- "pleteness of the schedules in evidence, and especially the "fact that it was the duty of Frank W. Hatch to pay the "taxes under the arrangement shown to exist between him- "self and his father, should all be taken into consideration. "(Rec., p. 105.)

To each of these instructions the respondent reserved his exception at the time.

ARGUMENT.

In the progress of this litigation three different relationships have been suggested as properly designating the attitude of the Messrs. Hatch toward each other in connection with this farm and personality, viz.: bailor and bailee, *landlord and tenant* and master and servant. The Court of Appeals, in reversing the first judgment, which was in favor of the levy, said: "The natural and reasonable construction of the arrangement is a bailment." * * * *Hatch vs. Heim*, 86 Federal Reporter, 436. On the second trial in the court below, the defendant in error abandoned this theory, however, and sought to establish that Lewis Hatch and Frank W. Hatch were *master and servant*, respectively. The contest in support of the execution levy has been prosecuted on the theory that under the contract made by these two men, *Lewis Hatch was the landlord and Frank W. Hatch the tenant*, the holding being a *tenancy at will*.

To sustain the proposition that the son was the *servant* of his father the defendant in error must establish that under this contract the control of the farm and personalty was *reserved* to the *father*. This may well be said to be the main point of the whole inquiry. Now what was the understanding of these two men of the provisions of this contract as shown by their statements of its terms and by their conduct under it throughout the fourteen years of its existence? Does it appear that the *dominion* and right to make the *final direction* was reserved to Lewis Hatch, and that Frank was there simply as his servant, *subject at all times to his absolute direction*, as to what

should be done with the property, what should be sold, what should not be sold, when and how the fences should be repaired, the soil manured, the ground plowed, the corn husked, the hay cut, the sheep sheared, etc., etc.? Can it be fairly said that such a condition in this contract was contemplated by either of the parties?

What is a *servant?* Let us consult a few high authorities on this subject.

"A servant is one who, for a consideration, agrees *to* "*work subject to the orders of another.*"

MacDonell on Master and Servant, 34.

"In strictness a servant is one who, for a valuable con- "sideration, engages in the *service* of another *and under-* "*takes to observe* his *directions* in some lawful business."

Cooley on Torts, 531.

"Where a person in the *employment* of another who in "the discharge of his duties is *subject* to the *immediate* "*direction and control* of his *employer*, he is properly "described as a *servant.*"

25 Ohio, 162.

Now what is a *master?*

"He is to be deemed the *master*, who has the *supreme* "*choice, control* and *direction* of the *servant* and whose will "the servant represents, not merely in the *ultimate result* "*of his work* but in all his *details.*"

Sherman & Redfield on Negligence, Sec. 160.

"He (the master) must hvae had the right to direct the

"action of the servant and to *accept or reject* its rendition by "him."

Paint & Color Co. vs. Conlon, 92 Mo., 221.

But the Connecticut judge seems to have been the most fortunate in his definition of this relation.

"To get at the truth we must look further and see if "the person said to be the servant *is acting at the time for* "*and in the place of the master*, in accordance with the *mas*-"*ter's will* and *not his own*."

Corbin vs. American Mills, 25 Conn., 274.

Do not these authorities effectually dispose of this master and servant claim?

What was the contract? The father's offer in substance was:

"Here is this farm of 700 acres; it is in good repair and "well stocked; I am getting old and want to get rid of this "burden so I can get away. (Rec., p. 30.) Now, my son, "if you will come here and take this farm and run it and "keep it up, making all repairs, paying all taxes on both "the realty and personalty, you can have what you can "make out of it. It is agreed, however, that if either of us "want to terminate the arrangement you must give the "farm up to me as it now is. If you have not got *the same* "*identical articles of personal property now on the farm* "you are to *substitute them with other ones*."

This offer the son accepted end the contract thus made was in force on that farm when the execution was levied.

Now is it not true that the purpose and effect of the contract was to put a new *Master* on that farm? The under-

signed believes that this is the first case on record in the reported decision of courts wherein a man who has run a business, who has had the sole enjoyment of the profits, who has, single handed and alone, been liable for and had to bear, all losses incident to the conduct of the business, has been declared to sustain the relation of *servant* to some other man *with respect to that particular business.*

If it was understood that the father was to have the *master's* right to control the son absolutely, in the operation of the farm, what was the purpose of contracting in advance that the son's liability was to make repairs and keep up the stock? And is not such a stipulation totally inconsistent with the master and servant relation?

If the father had this control it was a mere superfluity to exact from the son a *contract* to do these things, because *having the right of control* the father could from day to day and month to month and year to year have given his own orders to his son and enforced obedience to his will.

If the father was in reality *master*, can it be conceived that he would have exacted from his servant a contract giving him, the *master*, *permission* to take from the farm produce for domestic consumption? And this is precisely what the parties did. (Rec., p. 52.)

Is it not perfectly plain that the spirit and purpose of this contract *was to put a new master on that farm*, one who would enable the father to rid himself of the cares and responsibilities of the farm, and that henceforth the business of that farm *was the business of Frank W. Hatch?* Most certainly it *was not the business of Lewis Hatch.*

Are not the undisputed terms of the contract conclusive that Lewis Hatch intended to part with the entire "say" and control of the farm and chattels, and that both parties understood *that Frank was succeeding* to the *entire "say" and control of the farm and chattels*, even *as all admitted* he did succeed to the *entire burden* and *responsibility* of the farm?

Was not the property placed in the son's hands to use in the business of running that farm *for his own exclusive benefit*, and was not the only thing the father got under this contract his son's *legal obligatian to turn back to his father the farm stocked and equipped as when he took charge?*

In the Spring of 1897 the son sold to his father (the so called master) for $1,000 a quantity a wool sheared from the backs of the sheep taken in the levy. According to the theory of defendant in error *he thus figured in the rather droll attitude of purchasing his own wool.* (Rec., pp. 36-39.)

The son purchased *at his own expense* a drove of heifers, from whom were derived the milch cows and young stock included in the levy. (Rec., p. 46.) This would seem to hardly consist with the theory that he was a mere servant and that this live stock thus purchased with his own means in reality belonged to somebody else.

Before the levy the son put in bids, *in his own name*, for contracts to supply the butter factory with fuel to run the engine. (Rec., p. 57.)

After the levy he put in these bids in his father's name. (Rec., p. 57.)

The defendant in error took from the farm 150 or 200 sheep, *but subsequently brought back to the farm the same*

number he had taken away. This is the sheep transaction as related by the son:

"Q. *Did he bring back 150 or 200 sheep and put them "back in that flock that you were responsible to keep up?* A. "*I think he did.*

"Do you know whether he did or not? A. I know "that he brought about that number back, *about the num-"ber he took away.*

"Q. For that purpose? A. I don't say for what pur-"pose; I don't know. (Rec., p. 72.)

Is the son to be taken seriously when he says *he did not know for what purpose his father brought this lot of sheep onto the farm?*

Lewis Hatch sold stock off of the farm, *but always accounted to the son for the proceeds.* (Rec., pp. 80 and 84.)

Lewis Hatch several times paid the taxes, but was always careful to see that *he got the amount out of the son.*

Lewis Hatch *purchased from the son the wool referred to, produced on this farm,* and gave him therefor $1,000.

And on June 15, 1897, Lewis Hatch made out a schedule of his personal property for taxation in the school district where this farm is located and in this schedule *he did not include one article of farm personalty.*

If he had been the *master*, would he have had to contract in advance that his servant should permit his master *to have produce from the garden?*

If he had owned the property *would he have left it out of his tax return?*

If he had been the master would he have been overruled

by his servant in the matter of the plowing of the field? (For this valuable bit of testimony by one of the farm hands, see Rec., p. 91.)

If he had been the master would his servant have *replaced the farm implements and purchased the drove of heifers at his own expense?*

If he had been the *master* would he have constantly accounted to his *servant for moneys received for the produce of the farm?*

If he had been the *master* would he have been obliged to put back on the farm *the same number of sheep he had shipped up to Dakota?*

If Frank had been the servant what concern of his would it have been that his father shipped 150 head of sheep from the farm?

If Frank had been the servant would his father have given him *$1,000 for wool which his father already owned?*

If Frank had been the *servant would he have kept up the farm machinery at his own expense?*

If Frank had been the *servant* would he have *overruled his master's orders* as to the plowing of the fields?

If Frank had been the *servant* would he have spent *his own* money *making the farm better?* (Rec., p. 55.)

If he had been the servant, *being a truthful man and a graduate of a law school*, would he have told the marshal that he was a *tenant of the farm?*

If he had been the *servant* would he have returned all this property for taxation *as his own?*

The manifest inconsistencies and absurdities of this master and servant proposition, in view of the contract of the parties and their conduct toward the property during all these years, it is respectfully submitted, demonstrate absolutely the impropriety of he court's instructions.

If the plaintiff in error was not entitled to have the court grant his motion to direct a verdict at the close of petitioner's evidence and renewed at the close of all the evidence *he certainly was entitled to have the court give to the jury the instruction requested by him in writing.* (Rec., pp. 107-108.) Manifestly the most favorable view that can be taken of this case from the standpoint of the defendant in error is that "*there was an issue of fact to be determined;*" and still the court not only instructed the jury that if they believed that the father and son told the truth about the contract, their verdict must be in favor of the defendant in error, but the court refused to give this manifestly proper instruction requested by the plaintiff in error, based on the theory that "*Frank could discharge his legal obligation to his father by turning over to his father, at the termination of the arrangement, personal* property *like in kind and amount to that on the farm at the beginning of the arrangement.*" If there was evidence *tending to prove* that Frank could have done this, this refused instruction *should have been given*, if, indeed, the court should not have allowed motion of plaintiff in error to direct a verdict in his favor. The undersigned begs to respectfully submit that this motion should have been granted.

The attention of the court is invited to the following textbook observations on the subject of who is a tenant:

"The relation of landlord and tenant subsists by virtue of

"a contract expressed or implied between two or more per-
"sons for the possession of land or tenements in considera-
"tion of a certain rent paid therefor. * * * *But a*
"stated rent is not essential to the contract; because from favor,
"or for a consideration passing to the lessor at the time of
"its conception, *a lease beneficial in its nature to the lessee,*
"may be made without any reservation of rent."

Taylor's Landlord and Tenant, p. 10, 7 Ed.

The consideration passing to Lewis Hatch under this contract *was Frank's agreement to keep up the farm*—realty and personalty.

"The law will, in general, *imply the existence of*
"a tenancy wherever there is an ownership of land on the
"one hand *and an occuption by permission on the other:* for
"in such cases it would be presumed that the occupant
"intended to pay for the use of the premises. * * *
"As a general rule it may be stated that the mere occupa-
"tion of land, with the owner's concurrence, will enure as a
"tenancy from year to year, or at will, according to the
"circumstances determinable at the pleasure of the owner."

Taylor's Landlord and Tenant, 7th Ed., p. 15.

"*A contract to pay rent is not essential in order to create*
"the relation (of landlord and tenant), although this is the
"usual incident of a tenancy. It is competent for a person
"to permit another to occupy his premises *gratis*, if he
"chooses to do so, and if the person enters into possession
"under such permission, *the fact that no rent was to be paid,*
"or that no term was agreed upon, does not divest them of
"the relation of landlord and tenant."

Wood's Landlord and Tenant, 2nd Ed., p 3.

It would seem that these learned authors, when the quoted observations were indited, must have had in mind just such a contract as that enteerd into between the Messrs. Hatch.

But aside from the question of the execution debtor's relation to the *realty*, the undersigned begs to recall a familiar rule which, in his judgment, clearly determines that the title to this personalty was in *Frank* W. Hatch at the time of the levy. That rule is, that when one man turns over personal property to another man under an arrangement by which that other man is not obliged to restore the *same specific* articles of property, but is at liberty to deliver *other* property of the same kind and value as that received, *the receiver becomes the owner of the property.*

Story on Bailments, Section 439.

Lonergan vs. Stewart, 55 Ill., 49.

Newmark's Law of Sales, Sec. 14; pp. 17. 18.

Schouler's Bailments and Carriers. 2 Ed., Sec. 6.

In such a case the law considers the transaction a *sale*. Mr. Benjamin has defined the position of the parties in such a case, as follows:

"One established test between a bailment and a sale is "that when the identical thing delivered is to be returned, "though perhaps in an altered form, it is a bailment, and "the title is not changed; but when there is no obligation "to return the specific article received, and the receiver is "at liberty to return *another thing*, either in the same or "some other form, * * * *he becomes a purchaser: the "title is changed; the transaction is a sale:* and the property

"is at the receiver's risk; * * * *This is more evidently "true when there is an express right in the receiver to con-"sume, dispose of or sell the article received.*"

Benjamin on Sales, 6th Edition—Bennett's, p. 5.

And to the same effect see *Good vs. Winslow*, 4 Allen, N. B., 241, in which the lessee of cattle agreed to return them in two years, "*or others in their stead.*"

The above observation of Mr. Benjamin appears to be particularly applicable to the case under consideration. Bearing in mind the purpose of the contract, the nature of the property and the object for which it was used, the execution debtor had not merely a *right* to "dispose of or sell the articles received," but the success of his business of running the farm made it absolutely necessary that he should be continually "*turning the property over.*" Thus it appears that neither of the parties to this contract could possibly have contemplated that when the arrangement terminated (if at all) the son would have on the farm the identical live stock, grain and implements received from his father. That was an impossibility.

In a Pennsylvania case the effect of such contracts as the one entered into between the execution debtor and the defendant in error was so clearly explained to the jury by the lower court that the undersigned begs the privilege of quoting the following from the charge of Judge BAER—it being a case of a levy by a judgment creditor of one Neuman, a miller, on flour at the mill. The plaintiffs claimed the property, alleging it was the product of wheat delivered by them to Neuman as *bailee*. The jury were

instructed that "it has been said that when the identical "thing delivered is to be returned, though in an altered "form, such contract is one of bailment. To illustrate: "When John Jones takes a bag of wheat to the mill to be "ground into flour, the transaction is one of bailment. He "expects to get the flour from that bag of wheat and he "continues to be the owner of the wheat or its product. If "it be destroyed by the burning of the mill, it is his loss, "and not the miller's; or if the sheriff comes with an execu- "tion to levy upon it as the property of the "miller, he cannot sell it. But where there is no "obligation to return the *specific article*, but the "receiver is at liberty to return *another thing, the transaction "is a sale*, and not a bailment. As when John Jones de- "livers twenty bushels of wheat to a miller and agrees to "take from him at some other time twenty bushels of other "wheat in return, this transaction is not a bailment, but a "sale, and the property passes to the miller, and in case the "mill should burn, the loss would be his, *and an execution "creditor could levy upon it as the miller's property*."

At page 603, 117 Pa. State, in the same case, the Supreme Court say: "The miller was under no obligation "to restore to plaintiffs the specific or identical wheat "which he received, nor the product of it in flour; indeed, "this, owing to the manner in which the business was con- "ducted, was practically impossible. The fundamental dis- "tinction between a bailment and a sale is that in the former "the subject of the contract, though in an altered form, is "to be returned to the owner; whilst in the latter there is "no obligation to restore the specific article; the party is at "liberty to return some other thing of equal value in place "of it. In one case the *title* is not changed, and in the

"other *it is*, the parties standing in the relation of *debtor* and "*creditor*."

Butz vs. Diehle, 117 Pa. State, 589-603.

And so in *Smith et al. vs. Clark*, 21 Wend., 83, the plaintiffs made an agreement to deliver wheat to one Hubbard at his flour mill, and Hubbard agreed that for every four bushels and fifty-five pounds of wheat he would deliver to the plaintiffs a barrel of flour. After plaintiffs delivered to Hubbard some two thousand bushels of wheat and Hubbard had delivered to plaintiffs only about half of the flour coming to them, Hubbard sold and delivered to Clark, the defendant, seventy-five barrels of flour ground from the wheat received from the plaintiffs and from other parties. The plaintiffs replevined the property. In its decision the court say (page 84): "The contract between "plaintiff and Hubbard was in effect one of *sale* and not of "bailment. The property in the wheat passed from the "plaintiffs at the time it was delivered at the mill and Hub-"berd became a debtor and was obliged to pay for the "grain in flour. There was no agreement or understand-"ing that * * * the identical wheat should be re-"turned in the form of flour. Jones on Bailments (2nd "Ed.), 102. A different doctrine was laid down in *Seymore* "*vs. Brown*, 19 Johns. R., 44, but the authority of that case "has often been questioned; 2 Kent, 590; Story on Bail-"ments, 193, 194, 285; *Buffum vs. Merry*, 3 Mass., 478; "and the decision was virtually overruled in *Hurd vs. West*, "7 Cowen, 752, and see page 756, note; the case of "*Slaughter vs. Green*, First Rand (Va.) R., 3, is much like "*Seymore vs. Brown*. They were both hard cases and "have made bad precedents."

In *Johnston vs. Brown*, 37 Iowa, 200, plaintiff sued de-

fendant in attachment, and the writ was levied on grain in warehouse at Toledo. This grain was left with the defendant by the intervenor, Bickett, with the understanding that when Bickett got ready to sell it Brown would give the highest market price or the same amount of wheat of like grade and quality. The court say (page 203): "The "authorities almost uniformly hold that a transaction such "as this is constitutes a sale and not a bailment." Citing

Chase vs. Washburn, 1 Ohio State, 244.
Woodward vs. Seemans, 125 Ind., 330.
Smith vs. Clark, 21 Wend., 84.
Wilson vs. Cooper et al., 10 Iowa, 565.
Ewing vs. French, 1 Blackf. (Ind.), 354.

Norton vs. Woodruff, 2 Coms., 155, in this case the court say:

"The distinction between an obligation to restore the "specific thing received, or to return others of equal value, "is the distinction between a bailment and a sale."

When the same identical article is to be returned, or is to be returned in an altered form, that constitutes a bailment, and the title to the thing remains in the bailor. If, however, there is no obligation on the receiver to restore the specific thing and he is at liberty to return a different article of equal value then it constitutes a sale, and the property is transferred by the delivery. The receiver acquires an absolute title thereto.

2 Kent Com., 590.
Jones on Bailments, 105-106.
Buffum vs. Merry, 3 Mass., 478
Butterefild vs. Lathrop, 71 Pa., 225.

It is not desired to submerge the court with authorities,

but the undersigned respectfully suggests that the following citation is of peculiar interest in this connection:

"In the present case the stipulation in the lease is to re-
"turn at the end of five years *cows of equal age and quality*,
"which necessarily *excludes the idea* that the *identical cows*
"*put on by landlord* were to be returned to him at the *expi-*
"*ration of the term*. For those cows could not be o equal
"age, although they might possibly be of equal value.
"* * * In relation to goods thus let with the farm
"* * * *they are the goods of the tenant, and may be*
"*attached and sold for the payment of his debts*. * * *
"It is unquestionably competent for the landlord in cases
"of this description to make a contract which will secure to
"him an equitable lien upon the property put upon the
"farm for the use of the tenant, or on the products thereof.
"By applying the well established principles of law. * * *
"*I am bound to decide that the legal title to the cows and*
"*sheep brought onto the farm at the commencement of the*
term "~~farm~~, *passed to the tenant*, so as to give him the right to
"dispose of them and *to subject them to seizure and sale for*
"*his debts*."

Carpenter vs. Griffin, 9 Paige, 314.

Your Honors will observe that in this last mentioned case the execution was contained, not because there was a *written* lease, but because the contract provided the tenant was under obligation "to restore *an equal number of cows* "*and sheep* of the *same age* as those leased with the farm at "the time the tenancy commenced."

In view of the foregoing it is respectfully submitted that the effect of the contract between the Messrs. Hatch (entered into fifteen years prior to the levy), was to transfer to the son the title to the stock and other farm personalty then

on the farm; that the son was thereby clothed with full power to deal with the property as his own; that as the father thereby lost the title to the property, he obtained the obligation of his son to have on that farm, on the father's demand, personal property, *equal in kind and amount* to that received from the father at the beginning of the tenancy; that during the fifteen years the tenancy subsisted the son run the business as his own, had the sole enjoyment of the benefits and discharged all the liabilities; he kept up the farm personalty; practically *nothing was levied upon that was on the farm fifteen years before;* had disease gotten among the stock and carried them off the loss would have been on the son. Under the contract the father had a valid, subsisting legal right to demand and receive from the son sock and other personalty, equal in amount and kind to that on the farm at the beginning. Whenever stock or produce was sold, the revenue went to the son. Whatever expenses there were came out of his pocket. If crops were poor it was his loss, and if they were good it was his gain—and his alone. The son had the sole right to sell. If the father disposed of anything he had to account to his son. In view of these facts, is it not perfectly manifest that the son was the absolute owner of the property, and that the *master and servant* relation could not possibly exist.

As was said by Mr. Kent, "*the power of alienation is a necessary incident to the right of property*" and it would therefore seem that in such a controversy as the one at bar if we can find the man possessing this power we will have located the owner of the property. And certainly the defendant in error did *not* have this power of alienation.

Suppose that Arnold, instead of being a United States Marshal with an execution for the property of *Frank* W Hatch, had been a neighbor of *Frank* W. Hatch desirous of purchasing for his own farm, implements, live-stock, and grain of the amount and kind involved in this controversy. And suppose, that instead of taking this property under this execution, neighbor Arnold had said "I will give you $4,500 for this property," and *Frank* W. Hatch had accepted the offer and took the money and turned over the property. And suppose then *Lewis* Hatch said to his son "I have decided to take back the farm; give it to me, with the same amount and kind of grain, implements, and live-stock as was on the farm at the beginning of our arrangement," and suppose that thereupon *Frank* W. Hatch had gone to neighbor Heminway and from him purchased grain, implements, and live-stock of the requisite number and kind, and took them to the farm of his father and tendered them to his father in discharge of his obligation under his contract, is it not perfectly clear that thereby his father would get precisely what his contract stipulated he should have? Would it not be a full discharge of the son's obligation in its strict letter, and is it not equally plain that neighbor Arnold would become the owner of the property as the successor to the title of *Frank* W. Hatch, and is it not also clear that the deal between neighbor Arnold and *Frank* W. Hatch was a transaction in which *Lewis* Hatch had absolutely no interest or concern whatever?

Or suppose the farm hand, Jones, while driving the reaper, had been thrown to the ground and injured by reason of defective machinery, and thereupon (preferring a judgment against *Lewis* Hatch to one against *Frank* W.

Hatch) suppose this farm hand sued the father *designating him as the master*, and suppose at the trial of this action *Lewis* Hatch should come into court and say "I am not responsible to this man" and then testify in terms to the contract in evidence here, *is it not perfectly plain that the farm hand's case would never get to the jury?*

The undrsigned erespectfully submits that in view of the foregoing, the judgment must be reversed.

KENESAW M. LANDIS,
Attorney for Plaintiff in Error.

No. 183.

Office Supreme Court U. S.
FILED
MAR 15 1900
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

No. 183.

JOHN W. ARNOLD, PLAINTIFF IN ERROR,

vs.

LEWIS HATCH, DEFENDANT IN ERROR.

AUTHORITIES CITED BY PLAINTIFF IN ERROR.

The Supreme Court will allow plaintiff in error to show jurisdictional amount by affidavit filed in this court.

Dean Richmond *vs.* City of Milwaukee, 21 Howard, 391.
Street *vs.* Ferry, 119 U. S., 385.
Williamson *vs.* Kincaid, 4 Dallas, 20.
Course *vs.* Stead, 4 Dallas, 22–25.
The Grace Girdler, 6 Wallace, 441.

KENESAW M. LANDIS,
Counsel for Plaintiff in Error.

No. 183.

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Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 183.

JOHN W. ARNOLD, PLAINTIFF IN ERROR,

vs.

LEWIS HATCH.

Opinion in Hatch vs. Heim, 58 U. S. App., 544.

HATCH *vs.* HEIM. } No. 471.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DIVISION OF THE NORTHERN DISTRICT OF ILLINOIS.

Argued February 19, 1898; decided April 16, 1898.

Before Woods, Jenkins, and Showalter, circuit judges.

The opinion states the case.

Mr. George A. Dupuy (Mr. E. H. Gary was with him on the brief) for plaintiff in error.

Mr. Kenesaw M. Landis for defendant in error.

WOODS, circuit judge, delivered the opinion of the court:

The plaintiff in error, Lewis Hatch, filed in the court

below his petition, entitled "Joseph G. Heim, receiver, etc., *vs.* Frank W. Hatch," averring, in substance, that he was the sole and absolute owner of certain personal property, consisting of live stock, farming implements, and farm products; that on Saturday, August 21, 1897, the property described was levied upon by virtue of an execution dated August 13, 1897, and issued out of that court "to enforce the collection of a judgment for four thousand dollars debt and three hundred fifty-one and nine-hundredths dollars damages and costs, entered on July 20, A. D. 1897, in favor of said above-named plaintiff and against the above-named defendant, Frank W. Hatch, in the above-entitled proceeding," and that the property had been wrongfully levied upon and taken from his possession.

It does not appear in the record, but was assumed at the hearing and in the briefs, that Heim was the receiver of a national bank, and that for that reason the case was one of which the district court had jurisdiction. No answer or plea to the petition was filed, but a jury was empaneled and sworn to try "the issue joined," and after hearing the evidence and the charge of the court returned a verdict finding the issues for the receiver, and that the property levied upon was the property of Frank W. Hatch when the levy was made. Various errors are insisted upon. Those predicated of the rulings of the court in admitting and excluding evidence do not seem to merit special consideration. If material error was committed it is to be found in the court's charge to the jury.

The essential facts of the case are that in 1883 Lewis Hatch, being the owner of a large and well-stocked farm, on which he then had and has ever since maintained his home, entered into an agreement with his son, Frank W., then just out of school, whereby the latter was to take the control and management of the farm and implements of husbandry and of the live stock thereon, maintain repairs, pay taxes, replace stock disposed of, and have as his own the net pro-

ceeds, each party being at liberty to terminate the arrangement at any time. The testimony of the father and the son to that effect is harmonious, and was not materially affected, so far as we perceive, by other testimony or by the proof of other facts, such as their returns of property for taxation and the disposition made by them of wool which had not been levied upon. The court in its charge stated the arrangement as follows: "Mr. Lewis Hatch was then approaching his seventieth year, according to the testimony, and desired to retire from active work. He said to his son, 'Now, here is the farm' (in effect. I am not attempting to quote the language, but in effect). 'Now, here is this farm of some seven hundred acres, and here is all of this stock, farming implements, and property on the farm. I want you to take it. I want you to do well by it. You shall receive all of the income or revenue which is derived out of it; in other words, all the benefits which accrued from the use of the farming property, subject, however, to the payment of all taxes, to the keeping up of repairs, and that the property itself, both farm and personal property, shall be kept up, so that at the termination, whenever that shall be, there shall be left here as much of personal property, stock, etc., as I turn over to you.'" The farm was conducted under this arrangement, the son living with the father, until 1886 or 1887, when, having married, Frank removed to Texas, but after some months returned at the request of his father and resumed control upon the same terms and conditions as before, except that he lived in a separate house built on the farm for his use. In November, 1892, he went away again, going to the State of Washington, where he incurred the liability for which the judgment was taken, for the satisfaction of which the property in question was seized on execution; but whether in that instance there was a complete and intended abandonment of the farm and property thereon, as when he went to

Texas, is not clear, but in the view we take of the case the question is not important.

The natural and reasonable construction of the arrangement, in our judgment, is a bailment which did not vest the title of any of the property or of the proceeds of the farm in Frank W. Hatch, though while the arrangement lasted he had power to sell to others without further authority from his father. Certainly the jury would have been justified in so finding if, indeed, the court ought not to have so instructed; and this being the arrangement, it was not necessary that Lewis Hatch, in order to protect his rights in the property, should assert dominion or in any way interfere with Frank's visible possession and control. The relation between them was not that of landlord and tenant, but was more like that of master and servant. The father, desiring his farm cared for and kept up and at the same time wishing to afford an opportunity to his son, employed him to take the control and management, as stated, and the possession given the son, being necessary to the performance of the service contemplated and determinable at any time at the will of either party, was not a tenancy, but the possession of a servant. (See cases cited in Chatard *vs.* O'Donovan, 80 Indiana, 20.) The son's possession of the farm and also of the products thereof and of other property was the possession of the father. The same is true also of property, implements, or live stock bought and brought on the place in pursuance of the agreement as a part of the farm equipment. It follows that the proposition, for which Story on Bailments (9th ed.), sec. 439, and Lonergan *vs.* Stewart, 55 Illinois, 44, are cited, that when one man turns over personal property to another under an arrangement by which the latter is not obliged to return the specific articles, but may deliver other property of like kind and value, the receiver becomes the owner of the property delivered to him, is not applicable, and the court erred when, after stating the arrangement, it proceeded

to say to the jury: "Now, then, that is their story of the arrangement. In that there is no word of suggestion by Lewis Hatch that he reserves a control as to how he was to conduct it (the farm), as to whom he would sell this or that produce from the farm, or this or that piece of stock—no suggestion of that is in the agreement as stated. Look over the conduct of the parties subsequently and see if you can find from that any such understanding." This is objectionable because it implies what was afterward distinctly affirmed in the charge, that if Lewis Hatch did not "retain the absolute dominion and control over all that property * * * the effect of the arrangement was to put the title of the property in Frank W. Hatch." This error was emphasized by other equivalent expressions in the charge, and especially by the statement that "no man has the right to put into the absolute control and possession of another personal property for a long period of time, in the State of Illinois, for the period of five years or more, without taking the consequences which accrue therefrom, namely, that the title must be presumed to be in the person to whom it was given over, if the control is an absolute control. * * * It requires a clear showing of a paramount control in Lewis Hatch—that is, a right to say what shall be done with reference to all this personal property or any of it. Unless that was retained by him, the title passed." The possession for five years which under the Illinois statute (2 Starr & Curtis' Annotated Statutes (1896), c. 59, sec. 7) establishes title is an exclusive and undivided possession, and does not apply, and evidently was not intended to apply, to a case like this, where the possession amounting only to custody is held for the benefit of the owner under circumstances which in no way suggest or could be promotive of fraud. The right of any one circumstanced as was Lewis Hatch to make such an arrangement with a son or with any other whom he should choose is an important right, inconsistent with no principle of public policy and forbidden by no precept of the

law, and if, instead of remaining upon the farm and exercising some measure of control, he had gone away, his right upon returning to assert title to the unsold property remaining upon the farm, whether the increase or bought to supply the place of that which was there when he put his son in control, would not be less clear.

The charge of the court seems also to be subject to the objection urged that the jury was not told that in respect to matters of fact the suggestions of the court were advisory only, and that the jury must finally exercise an independent judgment.

The judgment below is reversed, with instructions to grant a new trial.

No. 183.

Office Supreme Court U. S.
FILED
MAR 15 1900
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1899.

No. 183.

JOHN W. ARNOLD, PLAINTIFF IN ERROR,

vs.

LEWIS HATCH, DEFENDANT IN ERROR.

Motion for Leave to File Affidavit of Value.

Comes now the plaintiff in error and moves the court for leave to file the attached affidavit.

KENESAW M. LANDIS,
For Plaintiff in Error.

[Endorsed:] 183. U. S. Supreme Court. Law. Arnold *vs.* Hatch. Motion. K. M. Landis, for pl'ff in error.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, A. D. 1899.

JOHN W. ARNOLD, *Plaintiff in Error,*
vs.
LEWIS HATCH, *Defendant in Error.* } No. 183.

Affidavit of Amount in Controversy.

Kenesaw M. Landis, being first duly sworn, on his oath says that he knows the property levied upon and the title to which is in dispute in the above-entitled cause, and affiant says that the value of the said property at the time of the entry of judgment in said cause in the district court of the United States for the northern district of Illinois was in excess of the sum of one thousand dollars. Affiant further says that the value of said property at said time was in excess of the sum of four thousand dollars.

KENESAW M. LANDIS.

Subscribed and sworn to before me this 14th day of March, A. D. 1900.

[SEAL.]

JAMES D. MAHER,
Notary Public, District of Columbia.

[Endorsed:] 183. Supreme Court of the United States. Arnold *vs.* Hatch. Affidavit of value in controversy. K. M. Landis, att'y for pl'ff in error.

No. 183.

Petition for Rehearing.

Supreme Court of the United States.

Rec'd & Dec'd April 26, 1900.

OCTOBER TERM, A. D. 1898.

No. 183.

JOHN W. ARNOLD,
Plaintiff in Error

vs.

LEWIS HATCH,
Defendant in Error.

In Error to the United States Circuit Court of Appeals for the Seventh Circuit.

Petition for Rehearing.

KENESAW M. LANDIS,
Of Counsel for Plaintiff in Error.

Monitor Printing Company, 1533 West Lake Street, Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

No. 183.

JOHN W. ARNOLD, *Plaintiff in Error,*
vs.
LEWIS HATCH, *Defendant in Error.*

In error to the United States Circuit Court of Appeals, for the Seventh Circuit.

Petition for Rehearing.

And now comes the plaintiff in error, John W. Arnold, by Kenesaw M. Landis, his counsel, and petitions and moves for a re-hearing in this cause and of the rulings and judgment order of this Honorable court entered herein on April 9, 1900, at the present term of this Honorable court, in and by which judgment order this court affirmed the judgment of the United States Circuit Court of Appeals for the Seventh Circuit; and that said order be set aside and the cause re-heard.

And as ground for this request, plaintiff in error suggests:

First. That even under this court's interpertation of the contract between the defendant in error, and his son (the execution debtor), only so much of the property levied upon, and the title to which is in dispute here, is to be released from the levy, as equals, in amount and kind, the personal property on the farm at the time the contract was made; and

Second. That under the same interpretation the 150 tons of hay and four stacks of oats (*the product of the son's operation of the farm*), included in the levy cannot be released therefrom; for, under the same interpetration of the contract, and according to its literal terms, the son "should have the product of the farm."

In support of his petition the plaintiff in error ,begs to respectfully submit the following:

In the trial court the burden was on the defendant in error, to show affirmatively to what extent the marshal levied on property *like in kind* to that which was on the farm at the time the contract was entered into. And in-so-far as the record fails to disclose that the son received from the father property of the kind levied upon, it necessarily follows that to that extent the levy must be sustained. Manifestly, it would not be right to adjudge, as in the father, the title to any of the property *different in kind* from or exceeding in amount, that delivered by him to the son, for (quoting again from the opinion of the court), "the son's "only obligation was to return the property on demand, *or substituted property of the same kind and amount.*"

The defendant in error testified (Rec., p. 45), that when the levy was made, "*there was more sheep on the farm*" than there was when the contract was executed; further, that "when the levy was made *there was more cows*;" and the execution debtor (defendant in error's witness) testified (Rec., p. 66), that two of the plows and one corn-planter (Rec., p. 67), levied upon were not on the farm when he took charge. There was also taken in the levy (Rec., p. 9) eleven hogs, *and the defendant in error, made no showing whatever that there were any hogs on the farm when the contract was made.* These things being so, it is respectfully submitted as an inevitable conclusion that to that extent at least the judgment of the court of appeals was wrong.

As to the four stacks of oats and one hundred and fifty tons of hay produced by the son on the farm, the levy must stand.

The undersigned confesses to some embarrassment in discussing this branch of the subject, for the reason that under the court's interpretation of the contract (quoting from the court's opinion) "the son should have the *product of the farm*," and therefore that the hay and oats—*the product of the farm*—belonged to the son seems to necessarily follow as a matter of course. Still this court has decided otherwise. (That the hay and oats were produced on this farm see testimony of defendant in error's witness Frank W. Hatch, Rec., pp. 53 and 54.) To clothe the defendant in error with title to this last mentioned *product of the farm* would not be to *interpret* the contract of the parties, but rather would *nullify* it, would defeat its manifest and deliberate purpose.

If there could possibly be any doubt of this, it is utterly dispelled by your Honor's view of the "wool transaction." Quoting again from the opinion of the court, "There was "evidence that in the Spring of 1897, (the levy was made in "August of the same year) *the son sold to his father* for "$1,000 a quantity of wool *produced on the farm;* but as "it was also a part of the agreement that the son *should* "*have the product of the farm*, there was nothing inconsistent with it in the sale of the wool." Of course, the father did not purchase the wool that *already belonged to him*, and yet the logic of the court's opinion is that he did just exactly this thing. If in the Spring of 1897, *the father had not paid the son $1,000 for this wool*, and it had remained in the barn and been levied upon, it also (in the court's view of the case) would have belonged to the father along with the hay and oats—the other product of the farm—and (according to the court's opinion) *the wool and hay and oats would have been liable to seizure on execution for the father's debts.*

It is respectfully, but most earnestly submitted, that such seizure could not possibly have been justified. And if that is so does it not follow that, at least as far as the hay and oats are concerned the judgment of the Court of Appeals cannot stand?

There is a rule of this court which allows a defeated litigant to petition for a rehearing of his case. If, in the judgment of counsel the court has reached an erroneous conclusion, certainly counsel should not omit any effort which in his opinion, may tend to enable the court to get right. In this view, the undersigned conceives it to be his duty to invite the court's consideration of the following suggestions with respect to the legal status of the entire mass of property taken under this execution.

Quoting the language of the court, in the opinion delivered on the 9th day of April, 1900, the contract between the defendant in error and his son, Frank W. Hatch, the execution debtor, provided "that the latter should under-"take the management of the farm, farm implements and "live stock, make all repairs, pay all taxes and other ex-"penses, replace all implements as they were worn out, "keep up all live stock, and have as his own the net profits. "It was further stipulated that each party should be at liberty "to terminate the arrangement at any time, and that the son "should turn back to his father the farm with its implements, "stock and other personality, of the same kind and amount "as was on the farm when the father retired;" and "there "was evidence showing, not only that the son assumed the "entire management of the farm, but that he was at full "liberty to sell and dispose of its products, to replace old "stock and implements with new, and to appropriate the "net proceeds to himself; and that his only obligation was

"to return the property, or *substituted property* of the *same* kind and *amount*."

Under the terms of this contract the undersigned submits that during the life of this agreement the relations of the Messrs. Hatch to the personal property on the farm were as follows:

1. The father retired from the farming business and the son went into the farming business.

2. The father had no responsibility, pecuniary or otherwise, with respect to the personal property, either as to its management or disposition, directly or indirectly. Legally, it made no difference to him whether crops were good or bad, whether disease invaded the flocks or not. His son was under contract, *binding and legal*, to return to the father, on demand, *the same amount and kind* of property as was on the farm at the beginning.

3. Under this contract all liabilities and benefits were with the son. If crops were poor, the loss was his, because the profits were his, and poor crops meant low profits, or none at all. And more than this, if disease carried off the sheep, or cattle, or hogs, the loss was his, absolutely, under the above contract as quoted by the court in its opinion, for did not the father have the son's binding, legal obligation to demand and receive from the son article for article to the full extent that such property was on the farm when the father retired?

4. While the father was obliged under the contract to receive the identical property from the son, if he tendered it in discharge of his obligation, the latter was not obliged to deliver to the father the identical property. The son had the option to deliver the *same kind and amount* of property.

Therefore the son, *at any time*, could fullfil his promise by tendering to his father on the farm *any property* like in kind and amount, even though the son brought it onto the farm from somewhere else.

The plaintiff in error is entitled to have the contract interpreted and enforced as the parties themselves deliberately made it, and not according to their supposed but unexpressed understanding of its terms, and the words employed, not being of technical meaning, are to be taken in their common, ordinary acceptation. Quoting again the language of the court in its opinion, the son's only obligation "was to return the property on demand, or substituted "property of the same kind and amount."

Now, suppose that during the life of the contract an execution had issued against the property of William Hemingway, and that the marshal had levied that execution on the property (the title to which is in dispute in this suit), is it not clear that it would have been the *son's* business to file an intervening petition to have the property released from the levy? And if the levy of the execution against Hemingway had been sustained by the courts, would not the loss of the property have fallen on the son—would not the father have a clear right to demand and receive from the son *property like in kind and amount to that which was on the farm when the father retired?* The father could not have filed such an intervening petition for the manifest reason that he had no title to that particular property. He could not sell it. He could not give it away *so long as the contract with his son should last.* All he had was his son's promise to deliver to him at some future, undetermined time so much property of a certain kind, and it could make no difference to him whether the

court released or sustained the levy under the Hemingway execution. He still had the son's obligation to deliver sheep for sheep, steer for steer and plow for plow, no matter what decision the court might render. If these things be true, it is submitted that *legally* this contract reposed the title to the property in Frank W. Hatch.

The contract was a sale of the property. Under its terms the consideration moving from the father was his delivery of the property to the son, and the consideration moving from the son was his promise to deliver to the father at some future time, on demand, a like amount of the same kind of property.

In the opinion referred to the court say:

"It is very evident no sale of the farm property was *intended.* * * * Indeed, *the only indicium of a sale* is "the provision that the identical property received need not "be returned, *but that other property of the same kind "might be substituted.*" This statement of the court is in entire harmony with the understanding of the plaintiff in error. This was the exact situation in all of the cases quoted in plaintiff in error's original brief, and which follow here:

Story on Bailments, Sec. 439.
Lonergan vs. Stewart, 55 Ill., 49.
Newmarks Law of Sales, pp. 17, 18.
Schouler's Bailments and Carriers, 2, Ed. Sec. 6.
Benjamin on Sales, 6 Ed. Bennett's, p. 5.
Good vs. Winslow, 4 Allen, N. B., 241.
Butz vs. Diehl, 117 Pa., St., 589, 603.
2 Kent. Com., 509.
Buffum vs. Merry, 3 Mass., 478.
Hurd vs. West, 7 Cowen, 752.
Johnston vs. Brown, 37 Iowa, 200.
Chase vs. Washburn, 1 Ohio St., 244.
Woodward vs. Seemans, 125 Ind., 330.
Smith vs. Clark, 21 Ibend., 84.

Wilson vs. Cooper, 10 Iowa, 565.
Ewing vs. French, 1 Black (Ind.), 354.
Jones on Bailments, 105-106.
Butterfield vs. Lathrop, 71 Pa., 225.
Carpenter vs. Griffin, 314.

Of this "indicium of a sale" Mr. STORY has said; "The "distinction between an obligation to restore the *specific* "thing received or to return *others* of equal value, *is the* "*distinction between a bailment and a sale.*"

In all of these cases, "*the only indicium of a sale* was the provision that the identical property need not be returned, but that other property of the same kind might be substituted." This was the one distinguishing characteristic of all of them. In not one of them did the parties *intend* to make a *sale* of the property, or *understand* that they had made a *sale*. *In all of them, the courts* adjudged the transaction to be a sale, *for the one and only reason that other property, like in kind and amount*, might be delivered. In each instance the court reached this conclusion by giving the natural, ordinary meaning to the words deliberately employed by the parties themselves, regardless of the *possibility* that they may have imperfectly or incorrectly *expressed* their real intention, or that they had failed to appreciate the true legal meaning of the terms adopted.

The court in its opinion (referring to authorities quoted in original brief of plaintiff in error) proceeds:

"But these authorities have no application to the case "under consideration. Here there was no provision for a "substituted property beyond that required by the nature "of the property delivered. The arrangement was to be "indefinite in its continuance. The property was mostly "animals, which would necessarily die, be sold or slaugh-"tered in a few years, and the gradual substitution of their "progeny, or other similar cattle, and a renewal of worn-"out implements was all that was contemplated. The sti-"pulation that this might be done was a mere incident to "the main agreement, by which the property was to be re-"turned in like good order as received."

The undersigned has no desire to tax the patience of the court, but (in view of an apparent misapprehension) he conceives it to be his duty to call your Honors' attention, specifically, to at least one of the cases thus referred to by the court, and liberally quoted from at page 27 of his original brief. It is the case of *Carpenter vs. Griffin*, 9 Paige, 314, and from the opinion the following language of the court is quoted.

"In the present case the stipulation * * * is to re-"turn at the end of 5 years cows of equal age and quality, "which necessarily excludes the idea that the identical cows "put on by the landlord were to be returned to him at the "expiration of the term. For those cows could not be of "equal age, although they might possibly be of equal value. "In relation to goods thus let with the farm, *they are the goods "of the tenant and may be attached and sold for the payment "of his debts.* * * * *By applying the well established "principles of law, I am bound to decide the legal title to the*

"cows and sheep brought onto the farm at the commencement "of the term passed to the tenant, so as to give him the right "to dispose of them and subject them to seizure and sale for "his debts."

It is submitted that it would be difficult to find an authority more applicable to a pending case. Indeed it would seem to be almost an identical case. The only *"indicium of sale"* was the provision that "cows of equal age and quality were to be returned," and the court held that it was a sale, *for that reason alone.* In that case (as in the case at bar) "there was no provision for a substituted property be- "yond that required by the nature of the property deliv- "ered," and there "the property was (*entirely*) animals, that "would *necessarily* die, be sold or slaughtered in a few "years."

In concluding the opinion, the court say (speaking of the agreement between the Messrs. Hatch, as first above quoted):

"Similar agreements have been sustained as against "creditors in a number of cases," citing *Chatard vs. O'Donovan*, 80 Ind., 20; *Wilbur vs. Sisson*, 53 Barb., 259; *Bowman vs. Bradley*, 151 Penn. St., 351; *Kerrains vs. People*, 60 N. Y., 221; *Haywood vs. Millor*, 3 Hill, 90; *Brown vs. Scott*, 7 Vt., 60; *Peters vs. Smith*, 42, Ill., 422; *State vs. Curtis*, 20 N. C., 226.

This seems to render proper at least a brief consideration of each of these cases so regarded by the court as an authority here.

In *Chatard vs. O'Donovan*, 80 Ind., 20, the defendant in error was a Catholic priest at Brownsburg, Indiana, and by virtue of his position occupied the parsonage, which belonged to the Roman Catholic church, and the legal title to which was in Chatard, the bishop of the diocese. For some reason, O'Donovan was relieved of his priestly duties by the bishop, who demanded that the ex-priest surrender the parsonage for the occupancy of his successor. O'Donovan refused to get out, and in ejectment the court held that he had no right to stay.

The plaintiff in error believes this decision to be good law, but is forced to confess his inability to see that it has any application here.

In *Wilbur vs. Sisson*, 53 Barb., 259 (quoting the language of counsel for defendant in error, at page 19 of his original brief) "One John Gamel, agreed to work the dairy "and land of Conger for one year. For the use of the farm "and dairy, he was to deliver to Conger 9,600 pounds of "cheese at the factory managed by Sisson. The milk from "the dairy was taken to the factory, and made into cheese. "The cheese was converted into money, which remained in "the hands of Sisson. This cheese, the defendant Sisson "claimed, was, by force of the agreement, the property of "Conger, and that he should be permitted to pay the money "to Conger. * * * The compensation of the owner "(Conger) was to be * * * 9,600 pounds of cheese.

The plaintiff in error has no fault to find with this decision. The court undoubtedly correctly applied the law. But it is deemed proper to suggest that it is not an authority for anything in controversy here. If the contract had provided that the 9,600 pounds of cheese were to go to Gamel, *who worked the farm* (instead of to Conger, who owned the farm), and the sheriff had seized the cheese under an execution for Gamel's debts, we would then have the present case. From the reasoning of the court, nothing can be more plain than that, had the case come up in that posture, the execution levy would have been sustained.

In *Bowman vs. Bradley*, 151 Penn. St., 351, (another one of the cases which the court cites as sustaining against creditors an agreement similar to the Hatch agreement) Bradley owned a farm of twenty-nine acres, of which four or five acres were occupied by a mill and pond operated by Bradley, the owner; Bradley hired Bowman and his family for $1 a day, to care for the farm and stock; in addition to the $1 a day, Bowman was to have the use of a house on the premises for himself and family. The parties got into a dispute, and Bradley discharged Bowman, and ordered him to vacate the house, claiming that the contract was terminable at his pleasure; Bowman refused to move, claiming that he had a contract for a year. The court held "the "terms of the contract was for the jury to determine, but "the terms being fixed, their legal import was for the court." And the court proceeded: "The house was a convenient "place for the residence of the *laborer*. * * * His pos- "session was that of the owner whom he represented and "for whom he labored for hire." Interpreting the contract according to Bradley's version, of course, no plausible theory could be advanced in support of Bowman's contention.

It is not observed in just what respect this authority sustains "a similar agreement" to the Hatch contract "as against creditors." There was no question of the kind remotely involved in the case. Bowman was a mere hired laborer at $1 a day. No question of the ownership of any property, real or personal, appears to have been raised. The court simply decided that a farmer has a right to get rid of his hired man employed for an indefinite period, when the farmer conceives it to be to his interest to sever the relation.

The case of *Kerrains vs. The People*, 60 N. Y., 221, is also cited by the court as sustaining "as against creditors," an agreement similar to the Hatch contract. In this case, Kerrains, for several years, had worked for a man named Son, and lived in a house belonging to Son. In 1871 the parties made a new agreement, by which Kerrians was to work for Son, at whatever he was told to do, for one year, "if they could agree," Son paying Kerrians 13 shillings per day and furnishing him a house. Kerrains refused to do some work demanded by Son, whereupon the latter paid Kerrains his wages, discharged him, and told him to vacate the premises, which he refused to do. Thereupon, Son proceeded to remove Kerrains' furniture from the house, and the latter assaulted Son.

The court held that the employer had a right to remove the furniture from the house.

It will be observed that this case, like the preceding ones, was also free from any question relating to the ownership of property, or to the rights of creditors in the same, or to any proposition which the court, in the text of its opinion, considered involved in the case at bar.

In *Haywood vs. Miller*, 3 Hill, 90, (also cited by the court with the preceding cases,) the plaintiff, a farmer, owned two farms, several miles apart. He made a contract with Miller, by which the defendant agreed to work for the plaintiff for one year, at a compensation of $160. Miller moved his family into the house on one of the farms, and Haywood directed him to perform some labor, which he refused. Thereupon, Haywood forcibly put Miller and his furniture out of the house, and Miller sued for damages.

There was no question of the ownership of property, real or personal, raised or decided in this case.

The case of *Brown vs. Scott*, 7 Vt., 60, (also cited by the court), *was* a case involving the title to property. Brown, the plaintiff, had purchased a farm, to furnish a home for an indigent father, and suffered him to go there and labor and live. He produced some hay, which his creditor levied upon and sold. The son, who owned the farm, sued the sheriff for the value of the hay, and the Supreme Court of Vermont held that the hay did not belong to the father.

But, suppose in that case the court had been confronted with such a contract as we have here, providing *expressly* "*that the hay*—the product of the farm," *should belong to the individual running the farm*, is it not manifest that the levy would have had to be sustained?

Still considering the cases cited by the court "as sus- "taining similar agreements as against creditors," we come to *State vs. Curtis*, 20 N. C., 226, which counsel for defendant in error, in his brief (page 36) aunounces "grew "out of facts in many respects similar to the case on hear- "ing."

In this case, Pope, an *overseer*, was employed by Curtis, a planter, who gave him in the house a room in which to lodge. The plaintiff, being dissatisfied with his overseer, sought to get him out of the house, with the result that there was trouble, resulting in the prosecution of the planter. And this is what the Supreme Court of North Carolina says:

"Certainly, it has never been understood among us that "when a planter places an overseer on his plantation to "superintend *his* operations and hands there, that he puts "him into possession as against himself, so that he cannot "turn him off during the year. * * * The redress of "the overseer is by action on the contract of the employer, "and not by holding over that which was never in his "possession for an instant, but as the servant and agent of "his employer."

In this case your Honors, will observe there was no controversy about the ownership of property under levy of an execution. The relation between the planter and the *overseer employed by him* "to superintend *his* "hands" *did not in any one respect* resemble the relation existing between the senior Hatch and his son, whom (quoting from the opinion of the court) *the father had put "upon the footing of an independent farmer*." The plaintiff in error is unable to see that the case of the overseer can be considered as authority here.

And lastly, we have the case of *Peters vs. Smith*, 42 Ill., 422. This was replevin for live stock and implements. The plaintiff had purchased the property and placed it in the hands of his brother, to be used by him in the farming business until plaintiff required *them* to be returned. A judgment creditor of plaintiff's brother levied on this property, and the case was tried and disposed of *entirely with respect to the statute of frauds*. The rule contended for here by plaintiff in error was not considered. If it had been, we can only conclude it would have been recognized and adopted by the Supreme Court of Illinois, as it was three years later in *Lonegarn vs. Stewart*, 55 Ill., 44.

It is believed that this is such a case as the court had in mind when the rule providing for a re-hearing was made; that, from the foregoing, it is apparent that a re-examination would result in a reversal of the judgment of the Court of Appeals; that, even if this court, on such re-examination, refused to modify its view as to the effect of the contract on the great mass of the property levied upon, the court would allow the judgment to stand *only as to such property levied upon as equalled in kind and amount that property which was on the farm when the contract was made*, as shown by the record; and, certainly, that the court would not release from the levy the hay and oats, *produced* by the son on this farm.

Respectfully submitted,

KENESAW M. LANDIS,
For Plaintiff in Error.

I certify that, in my opinion, the foregoing petition is well taken, and that said cause should be re-heard.

KENESAW M. LANDIS,
Of Counsel for Plaintiff in Error.

No. 183.

By. of Dupuy for D. C.

Filed Mar. 12, 1900.

Office Supreme Court U. S.
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MAR 12 1900
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United Stat

OCTOBER TERM, A. D. 1899.

No. 183.

JOHN W. ARNOLD,
Plaintiff in Error,

vs.

LEWIS HATCH,
Defendant in Error.

In error to the United States Circuit Court of Appeals for the Seventh Circuit.

Brief and Argument for Defendant in Error.

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In error to the United States Circuit Court of Appeals for the Seventh Circuit.

Brief and Argument for Defendant in Error.

AS TO THE FACTS IN THE CASE.

MAY IT PLEASE THE COURT:

Defendant in error objects to the statement of facts furnished in the brief of counsel for plaintiff in error.

The record shows that on the 21st day of August, A. D. 1897, John A. Logan, a deputy United States marshal, appeared on the farm of Lewis Hatch with an execution against the goods and chattels of one Frank W. Hatch and made a pretended levy on the property of Lewis Hatch; that Lewis Hatch was then and had been for many years the owner of this farm, and was then the owner and in possession of the live stock and chattels

levied on. The further facts necessary to be understood are set out in the statement of facts made by the judge before whom the case was tried, and also the statement of facts made by the United States Circuit Court of Appeals, both of which statements are contained in the opinion filed in this case in the last named court upon the first hearing.* These statements of facts should be thoroughly satisfactory to this court in view of the fact that the trial court, on the facts so stated by it, directed a verdict in favor of the plaintiff in error, while the Court of Appeals reached the opposite conclusion as to the rights of the parties, and rendered a decision in favor of the defendant in error. The statement of facts as thus made by his Honor Judge SEAMAN, of the District Court, before whom the case was tried, was made upon the trial, after having patiently heard all the evidence in the case, and with all the testimony fresh in mind. The statement of facts as made by his Honor Judge WOODS, of the Court of Appeals, was made after careful examination of the record, and is contained in the opinion which reversed the decision of the lower court. With these statements of facts the defendant in error is content. We quote them from the opinion in the case of

Hatch v. *Heim*, 58 U. S. Cir. Ct. of Appeals, 546, 547.

> "The essential facts of the case are that in 1883 Lewis Hatch, being the owner of a large and well-stocked farm on which he then had and has ever since maintained his home, entered into an agreement with his son, Frank W., then just out of school, whereby the latter was to take the control and management of the farm and implements of husbandry and of the live stock thereon, maintain repairs, pay

* *Hatch* v. *Heim*, 58 C. C. App., 544. See opinion on second hearing, *Arnold* v. *Hatch*, 60 C. C. App., 659.

taxes, replace stock disposed of, and have as his own the net proceeds, each party being at liberty to terminate the arrangement at any time. The testimony of the father and the son to that effect is harmonious, and was not materially affected, so far as we perceive, by other testimony or by the proof of other facts, such as their returns of property for taxation, and the disposition made by them of wool which had not been levied upon. The court in its charge stated the arrangement as follows: 'Mr. Lewis Hatch was then approaching his seventieth year, according to the testimony, and desired to retire from active work. He said to his son: "Now, here is the farm" (in effect. I am not attempting to quote the language, but in effect). "Now, here is this farm of some 700 acres, and here is all of this stock, farming implements, and property on the farm; I want you to take it; I want you to do well by it; you shall receive all of the income or revenue which is derived out of it, in other words, all the benefits which accrued from the use of the farming property, subject, however, to the payment of all taxes, to the keeping up of repairs, and that the property itself, both farm and personal property, shall be kept up, so that at the termination, whenever that shall be, there shall be left here as much of the personal property, stock, etc., as I turn over to you."' The farm was conducted under this arrangement, the son living with the father, until 1886 or 1887, when, having married, Frank removed to Texas, but after some months returned at the request of his father and resumed control upon the same terms and conditions as before, except that he lived in a separate house built on the farm for his use. In November, 1892, he went away again, going to the State of Washington, where he incurred the liability for which the judgment was taken, for the satisfaction of which the property in question was seized on execution; but whether in that instance there was a complete and intended abandonment of the farm and property thereon, as when he went to Texas, is not clear, but in the view we take of the case, the question is not important."

We beg leave, however, to call the attention of the court to the *following additional facts* not contained in the brief outline above quoted, namely, that Hatch, Sr., owned this farm for more than twenty-five years (Rec., 26); that he made his homestead there in 1875, and had lived there ever sinoe that time; that he is a very old man—past eighty-four years old at the time of the hearing of this cause (Rec., 41); that this arrangement was made with Frank Hatch in 1883 or 1884, when he was a young man (Rec., 41), just out of school, unmarried, living with his father in the same house; that he continued to live with his father several years after this arrangement was entered into (Rec., 41); that the board of the hired men on the farm was all furnished by the father until after Frank Hatch was married; that after Frank returned from Texas, in 1887, he and his wife continued to live in the house with the father for a year or two, Frank having no other place of residence on the farm; that subsequently Frank's wife not being satisfied with that arrangement, he built a house—which in the testimony is called the "little house" (Rec., 49)—for their use, about twenty or thirty rods distant from the father's homestead (Rec., 48); that some of the hired men still lodged in the house of Lewis Hatch; that Lewis Hatch has lived on this farm ever since 1875 continuously; that in 1887 Frank Hatch gave up the arrangement and moved with his family and all his belongings to Texas, with the intent of making his home there (Tr., p. 59); that he bought property and settled there, and that upon going to Texas he left all of the stock on the farm just as he had received it from his father, not selling anything or attempting to sell anything (Tr., p. 59); that subsequently he was dissatisfied with Texas; that his

father wrote him while there, "Now, as to your coming back, I have not a word to say; I have said all that was necessary before you went away, You know what the terms are; there is nothing different from what they were, from what they have been formerly." The original of this letter, together with the envelope in which the same was sent, was introduced in evidence (Tr., p. 69); the postmark shows that it was "Received at Paris, Texas, May 6th, 12 o'clock M., 1887." (See Transcript, p. 69.*) That the arrangement referred to in the letter was the former arrangement between Frank Hatch and Lewis Hatch, as shown in the testimony on trial (Tr., p. 83); that subsequently Frank Hatch returned and a new arrangement was made, but on the same terms as before (Tr., p. 60); that Frank continued to manage the farm until 1892, at which time he went to the State of Washington for the purpose of locating; he invested in real estate and personal property in the State of Washington at that time, leaving all the stock on the farm, without selling or attempting to sell any of it, the same as he had done before (Tr., pp. 43, 44, 60 and 61. Frank again resumed management of the farm on the same terms as before (Tr., p. 44); that both during the time he was absent in Texas and also while he was in Washington, the management of the farm remained with Lewis Hatch.

II.

We apprehend, however, that the foregoing statement at length of facts involved is unnecessary because:

This court on appeal or error will not review questions of fact.

*For correction of transcript by leave of court see Rec., p. 118.

This doctrine was stated with great explicitness and in the most formal manner by this court, after very full consideration, in the case of

Hepburn v. *Dubois*, 12 Peters, 376,

where the court, referring to the provision contained in the seventh amendment of the constitution, namely, "In suits at common law, where the value in controversy shall exceed $2,000, the right of trial by jury shall be preserved, and no fact shall be otherwise examined in any court of the United States than according to the rules of the common law," said:

> "That where the evidence in a cause conduces to prove a fact in issue before a jury, it is competent in law to establish such fact; a jury may infer any fact from such evidence which the law authorizes a court to infer on a demurrer to the evidence; after a verdict in favor of either party, on the evidence, he has a right to demand of a court of error that they look to the evidence only, for only one purpose, and with the single eye to ascertain whether it was competent in law to authorize the jury to find the facts which make out the right of the party, on a part or the whole of his case. If, in its judgment, the Appellate Court shall hold that the evidence was competent, then they must found their judgment on all such facts as were legally inferrable therefrom; in the same manner, and with the same legal results, as if they had been found and definitely set out in a special verdict. So, on the other hand, the finding of the jury on the whole evidence in a cause must be taken as negativing all facts, which the party against whom their verdict is given had attempted to infer from, or establish by the evidence."

This doctrine has been announced in almost numberless cases since the above decision. Some of the later case are:

Barredo v. *Silsby*, 21 Howard, 146,

where it was said:

> "Repeated decisions of this court have affirmed the doctrine which is but a repetition of the constitutional provision upon the subject, that no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law; and it is well known that the only modes known to the common law of re-examining the facts of a case after they have been found by a jury or the granting of a new trial by the court, where the issue was tried, or to which the record was properly returnable, or by the award of a venire *facias de novo* by the appellate court for some error of law which intervened in the proceedings. * * * Whether the evidence, when offered, is admissible is a question for the court, but when admitted the question whether it is sufficient or not is for the jury, and it is their province to draw from it all such inferences and conclusions as it conduces to prove and which, in their judgment, it does prove, and their finding is conclusive, unless a new trial is awarded by the court, in which the case is tried, or in the appellate tribunal for some error of law. Guided by these principles it must be assumed in a further examination of this question that the facts are as they have been found to be by the jury."

This doctrine is so fundamental that further quotation of authorities is unnecessary. We therefore only cite the following cases in which the same doctrine has been announced:

Hyde v. *Stone*, 61 U. S., 170 (20 Howard, 170).

Northwestern Union Packet Co. v. *McCue*, 17 Wallace, 508.

Sturr v. *Beck*, 133 U. S., 541.

Fishburn v. *C., M. & St. P. Ry. Co.*, 137 U S., 60.

Town of Andes v. *Slossen*, 130 U. S., 435.
Johnson v. *Jones*, 66 U. S., 209.
Wilson v. *Everett*, 139 U. S., 616.
Ætna Life Ins. Co. v. *Ward*, 140 U. S., 76.

Under the doctrine of this decision we are entitled to respectfully insist that this court examine this evidence only to see whether it "*conduces*" to support the finding of the jury, and to ask this court to consider as established in favor of the defendant in error the most favorable view of the case that the evidence will support; in other words, the facts in the case, after the verdict of the jury, are to be *conclusively considered as consisting of those most favorable to the contention of the defendant in error;* and the evidence is to be taken as "*negativing all facts which the party against whom their verdict is given had attempted to infer from or establish by the evidence.*" Should this court adopt any other rule it would destroy the effect of the constitutional provision above referred to, and result in an examination of facts otherwise than as therein provided. "*Whether the evidence when offered is admissible is a question for the court, but when admitted, the question whether it is sufficient or not is for the jury, and it is their province to draw from it all such inferences and conclusions as it conduces to prove and which in their judgment it does prove;* and their finding is conclusive unless a new trial is awarded," etc.

This, then, being the recognized rule of law what is its application to the case at bar? There was direct and positive testimony in the case (much of which was entirely undisputed) to the effect that this farm was in the possession of Lewis Hatch at the time this levy had been made, and had continuously been for more than twenty-

five years; that this personal property was on the farm, and was in the possession of Lewis Hatch at the time the levy was made; that the property so seized by the marshal belonged to him, and did not belong to Frank Hatch, and never had belonged to him; that Frank Hatch was a manager and not a tenant of the farm. On these points, testimony, which has already been quoted in part, was as follows:

Testimony of Lewis Hatch:

> Q. Whose farm is it? A. It is mine.
>
> Q. How long have you owned that farm? * * * A. Some twenty-five years.
>
> (Rec. 27.) I built there new in 1875, and I have lived there ever since.
>
> Q. You were then living on the farm at the time this execution was levied on the property I have mentioned on August last? A. Yes, sir.
>
> Q. I will ask you whether or not you were in possession of this personal property situated on the farm, being the property I have mentioned, at and prior to the time that execution was levied? A. I was in possession of it, and have always been in possession of it. It has never been out of my possession.
>
> Q. You stated, Mr Hatch, that you had always been in possession of that property? A. I have, sir.
>
> (Rec., 28.) Q. And that all that property belonged to you at the time it was levied upon? A. It did, sir. * * *
>
> My son was my manager at that time, and had been for several years. * * * I had him engaged for an overseer, boss, or whatever you might call him. * * * He transacted all my business.

Frank W. Hatch (Rec., 40, 50):

> "Louis Hatch had lived on this farm since 1875, continuously. He is the owner of this farm; he was the owner of this personal property mentioned in the petition filed in this case; at and prior to the

> time of the levy of the execution it was in the possession of Lewis Hatch."

There is nothing whatever to contradict these facts except the inferences to be drawn from other facts which are supposed to be inconsistent with these primary facts. We shall not attempt to notice or examine these in detail, for if it be borne in mind that Frank Hatch was to receive all the earnings of this farm as his remuneration for taking care of it, instead of a stated salary, it will be apparent that there is no conflict whatever. This will be alluded to hereafter. The jury having found in favor of the defendant in error, the above facts are to be considered as established. If said facts are established in law, it is plain that the plaintiff in error has no standing in this court, and that this court will affirm the judgment.

We beg to have the court consider somewhat more in detail the questions that were in issue upon the trial of this cause. In the sworn petition filed by Lewis Hatch, he declares himself *to have been the owner of this property at and prior to the time of the levy of the execution* (Rec., 9), and the marshal, in his answer, *denies that at or prior to the time of the levy and at the time of the filing of the answer, said Lewis Hatch was the owner, but alleges that Frank Hatch was the owner of the property.*

Reference to the *testimony* in the case at this point has already been referred to in the preceding paragraphs.

His Honor Judge ALLEN, in defining the issues to the jury, said:

> "This is in effect a suit to try the title of the property, which was levied on by the execution, whether it was in the defendant, Frank Hatch, or whether it was at the time of the seizure in the petitioner, Lewis Hatch, and therefore your verdict will be in one or the other of the following forms:

We, the jury, find the property subject to execution, or

We, the jury, find the right to the property in the complainant, Lewis Hatch." (Rec., 105.)

The jury returned a verdict:

"We, the jury, find the property in the petitioner, Lewis Hatch." (Rec., 15.)

It therefore clearly follows that on this hearing, and for the purposes of this review by this court under the authorities above quoted, the only question for this court to consider is whether or not the evidence was sufficient, *i. e.*, *conduces*, to sustain the verdict. If so, the verdict is tantamount and a finding in favor of the petitioner of all the facts that were directly in issue and all such facts as were legally inferable therefrom,

> "with the same legal results as if they had been found and definitely set out in a special verdict. And the verdict must be taken as negativing the facts which the party against whom their verdict is given has attempted to infer from or establish by the evidence."

III.

ARGUMENT

(*a*)

Counsel for plaintiff in error, on page 13 of his brief, has stated the contentions made by him, which he desires this court to sustain, as follows:

> "*The contest in support of the execution levied has been prosecuted on the theory that under the contracts made by these two men, Lewis Hatch was the landlord and Frank W. Hatch the tenant, the holding being a tenancy at will. To sustain the position that the son was the servant of his father, the defendant*

in error must establish that under this contract the control of the farm and personalty was reserved to the father. This may well be said to be the main point of the whole inquiry."

While defendant in error contends that the principle of law which governs in all this class of cases is:

"*Where the possession of the property by the one using it is only an incident to his employment, the better to enable him to discharge the duties of his employment, the relation of landlord and tenant does not exist.*"

We think this will be made plain by the following considerations:

At the time this arrangement was made between Lewis Hatch and Frank W. Hatch, *the latter was a young man, just out of school, unmarried, and residing at home with his father. He continued to reside with his father until his marriage, and until after this agreement had once been broken up and terminated by his removal to the State of Texas for the purpose of permanently locating there.* Upon his return he again resumed the former arrangement without any alteration in its terms, and he and his wife lived some years in the father's homestead. Subsequently, he built a house, as hereinbefore stated, for his own use.

Could such an arrangement as this, by any possibility, if it were an open question not concluded by the verdict of the jury, constitute a tenancy between the Messrs. Hatch? The elder Hatch owned the farm; had owned it for twenty-five years previous to the time this arrangement was made; lived on it with his family and had continued to live on the farm in the homestead until the present time.

If a tenancy was created by this agreement, of what

did Frank become a tenant? Did he become a tenant of the whole farm, or a part of it? Did he become a joint tenant with Lewis Hatch of the homestead and house, or did he become a sole tenant thereof, or did the right of possession and occupation remain in Lewis Hatch? If Frank Hatch became a tenant of the farm, exclusive of the homestead buildings, what defines the limit of his holdings? These questions at once indicate the impossibility that Frank Hatch could at that time have become a tenant of the farm. If he did not become a tenant of the farm *at once, upon the making of this contract*, he certainly never *afterward* became a tenant, because no change was ever made in the terms of the contract between the two men. We have no hesitation in saying that such a construction placed upon the arrangement made between the two men is unquestionably contrary to their intent, and is not warranted by any evidence which appeared in the case. The court therefore was fully warranted in its instruction in using the language of which complaint is made, in which the jury were told that if they believed from the evidence "the arrangement between Lewis Hatch and Frank W. Hatch under which the farm was operated and carried on was substantially as had been testified to by Lewis Hatch and Frank W. Hatch, it did not have the effect in law to vest the title of any of the property or the proceeds of the farm in Frank W. Hatch."

The jury evidently believed the testimony of Messrs. Hatch that the arrangement was substantially as testified to by them, and accordingly brought in a verdict in favor of the petitioner.

If Frank Hatch had been hired with exactly the same powers that he had at a certain rate per month, payable

in cash, we apprehend that there would not be the slightest question as to the relation between himself and the owner of this farm. According to all the cases, and according to all good sense and all ordinary human experience, a man so employed does not acquire title or possession of the farm or personalty. He does not even become a tenant. His possession is that of the owner, and he is a mere custodian for the purpose of performing the service. In such a case there would be no reason why the dominion and control of the farm and all of its belongings should not be exercised entirely by the master and employer. He would manifestly be the only one having any interest in the question as to how the farm was conducted, what crops were raised, or how profitable the business was made. The employe could be interested only to receive his stipend. The master would be interested in receiving all that the farm could be made to produce.

On the contrary, where the employe is paid by receiving a part, or as here, all of the *profits of the farm*, manifestly his own personal interest would require him to exercise a larger degree of forethought than if he were paid wages by the month, as whatever profit accrues is to be his. So in this case, if any difference of opinion existed between Frank Hatch and his father in relation to the management of the farm, it will be seen at a glance that Frank Hatch was the one having the more direct interest. He was to have the *net income derived from the farm*. The elder Hatch had allowed him, under the arrangement, to have whatever net income there was after the payment of the taxes, expenses, keeping the place stocked, and everything in repair, etc. In other words, *a motive of Lewis Hatch to exercise active super-*

vision of the farm was wanting. A motive of Frank Hatch to take a personal interest in and to determine all questions about the farm management, was continually present. The force of these reasons undoubtedly operated in the minds of both Hatch, Sr., and Hatch, Jr., and explains and more than explains all of the fine points attempted to be made by the learned counsel for the plaintiff in error. It will be seen at a glance that these considerations answer the many difficulties suggested by counsel on pages 16 to 20 of his brief, and we shall not undertake to notice all of them.

Counsel says (Br., pp. 22, 23): "Frank has paid all the taxes on both the realty and the personalty;" we say that was according to the agreement. "He has replaced farm implements that had worn out;" why not? Such was the contract. "He has kept up the stock;" this was his agreement. "Before the levy he put in bids in his own name to supply the butter factory on the farm with fuel to run the engine. After the levy he also put in these bids, but in his father's name." What has this to do with the controversy in hand? They had the right to have these bids so put in if they wished. "He purchased heifers at his own expense;" this was but keeping up the drove of milch cows. "He sold a quantity of wool to Lewis Hatch, *and if Lewis Hatch had been the manager, would he have figured in the droll attitude of purchasing his own wool?*" Frank was to have *the profits derived from the farm; the money derived from this wool when marketed, whether to Lewis Hatch or some one else, constituted a part of the profits.* "Lewis Hatch took from the farm 150 or 200 head of sheep, but subsequently brought back to the farm the same number he had taken away." Yes, and this was done without any permission

from Frank Hatch. It was a clear recognition of the right on the part of Lewis Hatch to exercise his ownership and control over his property.

(*b*)

The questions involved in this suit were very fully and carefully considered by the Supreme Court of Indiana in a case where the facts were essentially similar. We refer to the case of

Chatard v. *O'Donovan*, 80 Ind., 20.

Chatard was a bishop of a Catholic diocese of Vincennes, and as such bishop had ownership, charge and supervision of certain real estate used in part for a parish house or place of residence of priests in charge of one of the congregations of the church. In the discharge of his duties he undertook the removal of O'Donovan from the position of priest and required him to surrender possession of the real estate and building occupied as a place of his residence. The question in dispute was whether or not the relation of landlord and tenant existed between the bishop and the priest or whether it was an employment in connection with which the use of the house was a mere incident, so that the relation of landlord and tenant did not arise. The court, in deciding the question, among other things, said:

> "The question thus presented is plainly an important one, not only as the decision may affect the policy and administration of the affairs of the church directly concerned, and perhaps other church societies which furnish houses for the use of their pastors, rectors or preachers, *but the owners and occupants of real property generally;* for it is readily conceivable that in many instances the owner and the tenant will be, in all essential respects, in the

same legal relation as the parties to this record, *as, for example, the servant brought into the dwelling, or upon the premises of the employer, and, as an incident to the employment, allotted a room or tenement to occupy while the service lasts; the mechanic or laborer, who, by the terms of his engagement, has the possession or use of a house belonging to the employer*, and for which the rent is to be deducted from his wages, or for which he is to pay no specified rent, and makes compensation only by accepting less wages than he would receive if he occupied a house of his own.

While these supposed cases, like the one before us, show the parties in relations somewhat like the ordinary relation of landlord and tenant, they are yet clearly and broadly distinguishable therefrom.

The case of *Kerrains* v. *People*, 60 N. Y., 221, is instructive. It was there held that

'*Where the occupation of a house by a servant is connected with the service, or is required by the employer for the necessary or better performance of the service, the occupation is as servant, not as tenant, and the possession is that of the master.*'

In the course of the opinion in the case, Church, C. J., says:

'Such was clearly the case of *Haywood* v. *Miller*, 3 Hill., 90, where a farmer hired a man and his wife to work a farm for wages. The occupation of the house was necessary to the performance of the service; and *The People* v. *Annis*, 45 Barb., 304, was substantially the same, although I am unable to agree with the learned judge who delivered the opinion in that case, that immediately upon the termination of the service a tenancy at will, or by sufferance, springs up. * * * *The question depends upon the nature of the holding, whether it is exclusive and independent of, and in no way connected with the service, or whether it is so connected, or is necessary for its performance.* And this, I think, is the result of all the cases. The question has often arisen in England under the poor laws, to determine what occupation would confer a

settlement, the courts recognizing, as controlling, the distinction between an occupation as a tenant or as a servant.' (Cases cited.) 'The case of *Hughes* v. *Chatham*, 5 M. & G., 54, arose under the reform act, requiring a registry of voters, the statute requiring that the person should occupy as owner or tenant. * * * Findal, C. J., in delivering the opinion of the court, said: "There is no inconsistency in the relation of master and servant with that of landlord and tenant. A master may pay his servant by conferring on him an interest in real property, either in fee, for years or at will, or for any other estate or interest, and if he do so the servant then becomes entitled to the legal incidents of the estate as much as if it were purchassd for any other consideration. * * * And as there is nothing in the facts stated to show that the claimant was required to occupy the house for the performance of his services or did occupy in order to their performance or that it was conducive to that purpose more than any house which he might have paid for in any other way than by his services; and as the case expressly finds that he had the house as part remuneration for his services, we cannot say that the conclusion at which the revising barrister has arrived is wrong."'

'I have cited the language of the court,' says Church, C. J., 'because is lays down concisely the correct rule for determining the question involved in this class of cases.' And, proceeding with a recital of the facts in the case before him, adds: 'The inference from these facts is reasonable, if not irresistible, in the absence of any provision for an allowance for rent, that the house was intended to be occupied by an employe for the benefit of the owner in carrying on the mill. *The case thus presented is analogous to that of a person employing a coachman or gardener, and allowing or requiring him to reside in a house provided for that purpose on the premises; or a farmer who hires a laborer for wages, to work his farm, and live in a house upon the same. In these cases the character of the holding is clearly indicated by the mere statement of facts.*"

'Many servants,' says Mansfield, C. J., in *Rex* v. *Stock*, 2 Taunt., 339, 'have houses given them to live in, as porters at park gates; if a master turns away his servant, does it follow that he cannot evict him till the end of the year?' To the same effect, see *McQuade* v. *Emmons*, 38 N. J. L., 397; *Doyle* v. *Gibbs*, 6 Lans., 180.

While it may not be said upon the facts of the complaint that the defendant was the hired servant of his bishop, *it does appear that he was appointed to his position by and held it at the discretion of the bishop, and that his possession of the property was only an incident to his appointment, the better to enable him to discharge the duties of his office*, and when, in the exercise of that discretion, which by the rules and customs of the church he had the right to employ, the bishop removed the defendant from his charge or pastorate over the congregation, his right to possession of the property at once necessarily ceased."

The case of *Wilbur* v. *Sisson*, 53 Barb., 259, is in many respects strikingly like the case at bar, including the "dairy money" which plaintiff in error seems to regard as such a *feature* in this case in the trial court. In this case one John Gamel agreed to work the dairy and land of one Conger for a period of one year from March 1, 1865; for the use of the farm and dairy, he was to deliver to Conger 9,600 pounds of merchantable cheese made at the cheese factory in Collins managed by Sisson. The milk from the dairy was taken to the factory referred to, and made into cheese; the cheese was sold and converted into money which remained in the hands of Sisson. This cheese, the defendant Sisson claims, was by force of the agreement the property of Conger to the extent of the money in controversy, and that he should be permitted to pay the money to Conger. This agreement between Gamel and Conger provided that Conger should

furnish good dairy cows to the number of fifty; that Gamel should work the land that should be occupied by the cows: the cows were to be at the risk of Conger during the year, and if any of them should be injured or unavoidably die, Gamel should pay the damages occasioned by such injury and replace such as should die. He was to work the land in a good, faithful, farmerlike manner, and raise all the grain, corn and grass that he could with good, faithful tillage of the land. He was to pay all taxes, except the county taxes, was to build certain fences and keep the premises in repair. The compensation of the owner was to be one-half of the grain raised, 100 bushels of apples from the orchard, and 9,600 pounds of cheese. The court in construing *this contract, said that it was not a lease; that Gamel did not become a tenant, and that the title of the property —referring to the cheese in controversy— was in Conger, the owner of the farm.* The court, among other things, said:

> "The terms of this description are somewhat peculiar, and it has therefore been said that in the construction of them courts should not tie themselves to mere words, 'the substance should be looked at, and that as it would be universally understood among farmers as an agreement between owners and occupants, that the latter should come in rather as servants than tenants, each party taking an interest as common owners in the crops and other products as they accrue, by way of compensation to the owners for the use of their farm, and the occupiers for their labor' (per COWEN, J., in *Putnam* v. *Wise*, 1 Hill, 247). * * * In this class of cases, the rule is well settled that the occupant does not become a tenant, and that the agreement between him and the owner is not to be construed as a lease. (*Caswell* v. *District*, 15 Wend., 379; *Dinehart* v. *Wilson*, 15 Barb., 595.) Where the agreement is of such a nature as to constitute a tenancy as distinguished

> from an occupancy to work the land on shares, there the products become the property of the tenant, and he may sell or dispose of them as he may choose. * * * The fact that Conger was to receive a fixed and specific quantity does not impair his rights as the owner of it. For the agreement, by providing that Gamel should own only the residue, as it does in effect, excluded him from owning any part of Conger's share. It was competent for the parties so to agree, and having done so, it necessarily left Conger the owner of all that was produced by the dairy."

If the conclusions of the court in this case are sound their application to the case at bar would seem to be very plain. This decision is also good authority against another point on which counsel for plaintiff in error has laid much stress. The court, among other things, said:

> "The stipulation that the occupant should pay all the taxes but the county tax and should build certain fences and keep the premises in repair, are as consistent with one relation as they are with the other, and are entitled to but slight, if any, consideration in the disposition which should be made of the case."

The relations here referred to were that of landlord and tenant on the one hand, and that of master and servant on the other.

In the very late case of *Bowman* v. *Bradley*, 151 Pa. St., 351 (17 Law Rep., Anno., p. 216), the case is stated by the court, as follows:

> "The facts on which the question arises are mainly undisputed; they show that Bradley owned a farm in Dolphin County, containing about twenty-nine acres; about four or five acres of this were occupied by a mill and pond operated by the owner; to care for the balance and the stock upon it, he hired Bowman and his family; the farm work and

the care of the cattle were to be looked after by Bowman; his wife was to milk the cows; his son was to deliver the milk each morning to Bradley in the City of Harrisburg; for this labor Bowman was to receive one dollar per day, and the use of the house upon the premises to be occupied by himself and family. The only fact in dispute was the duration of the contract. The plaintiff alleged that it was to continue for one year. The defendant asserted that it was terminable at his pleasure. * * * *Which was the true version was a question for the jury. If they found with the defendant, that was the end of the plaintiff's case, unless by some arbitrary rule of law the employe was turned into a tenant for years.* On the other hand, if they found the contract was for one year, the plaintiff was entitled to recovery unless the defendant should show a sufficient reason for terminating it sooner. The first question, therefore, that presented itself on the trial, was the nature and extent of Bowman's right to the house from which he was ousted by the defendant. Was that right and extent of the hireling a contingency upon the relation of employer and employe, or had it an independent separate existence so that he was to be treated as a tenant for years, with the right to retain possession for one whole year whether he remained in the employment of the owner or not? *This was a question of law. The terms of the contract, so far as the parties differed, it was the duty of the jury to determine. But the terms being fixed, their legal import was for the court to declare.* This should be determined upon the construction of the nature and purpose of the contract and the character of the business to which it relates. * * * *The house was a convenient place for the residence of the laborer; the house, the barn, the lane, the cattle, the farming tools, were turned over into the custody of the man who had been hired to care for the property, but he had no hostile possession, no independent right to possession; his possession was that of the owner whom he represented, and for whom he labored*

> *for hire.* * * * In all these cases and others that might be enumerated, the occupancy of the room or house is indispensable to the employment; the employe has no distinct right of possession, for his possession is that of the employer."

This case is a valuable authority on several points involved in the present hearing. In the first place, it merely announces what is fundamental, viz: That the questions of fact are for the jury. The facts in the present hearing have been found in favor of the defendant in error. This is the end of the case of plaintiff in error, if the finding of the jury were based upon proper instructions from the Court. This goes without saying. A very large part of the brief and argument of counsel for plaintiff in error, is in relation to what facts are shown by the evidence and to show that the jury incorrectly found the facts. This line of argument here is quite out of place.

Counsel insists (Brief, p. 28) that there was "evidence at least tending to prove a tenancy, and if there was such, did not the court err gravely in telling the jury that the contract made the parties master and servant? Was not the refusal to permit the jury to decide this issue of facts a palpable invasion of the rights of the jury and an utter denial of justice to the respondent? If there was such an issue to be determined, what can your Honors do but reverse this judgment?" This case holds that the question as to whether or not there is a "*tenancy*" in any given state of facts is *a question of law*, hence for the court.

Counsel magnifies and reiterates the alleged fact that Frank Hatch *said* he was a "*tenant.*" If Frank Hatch made such statement, he merely stated a mistaken conclusion of law, if the word tenant be used in its common technical sense. In a broader sense the word tenant

means *anyone holding property*, either personal or real. It means a *holder*. This is the sense in which the word is used in the case in the 34 Ill. App., 357, ~~cited by counsel and which is about the only case on which plaintiff in error seems to rely. (Brief, p. 27.)~~ In that case the definition of Webster of a tenant was approved; that definition sets forth the two shades of meaning of the word, viz.: The technical meaning of a tenant, "One who holds or possesses land or other real estate by any kind of right, either in fee simple, in common, or in severalty, or for life or years or at will," and the broader meaning of the word, "One who has the occupation or temporary possession of land whose title is in another." The controversy in this case related to the payment of some insurance which the company was trying to avoid, on the technical ground that the property insured was not in "the possession of a tenant," as stated in the policy, but the court held party holding the property was the tenant. It will be seen that the question thus adjudicated had no bearing whatever upon the question here presented; further, that it was an attempt by the insurance company to avoid the payment of insurance money solely on an extremely technical ground.

Before further proceeding to cite and discuss the cases which we regard as authorities, the attention of the court is particularly invited to the fact that in nearly all of these cases hereinafter cited the facts were different from the case on hearing in this one important particular, namely, *in nearly every one of these cases the farm or dairy or plantation was in the exclusive occupation of the party alleged to be the tenant.* In one of the cases the farm so occupied is referred to as the "*lower farm*," the owner living upon the "upper farm." On the con-

trary, in the case on hearing, *the farm was all the time in the possession of Lewis Hatch, he residing thereon in his homestead place, with the barns and out buildings about it. Frank Hatch resided, for a considerable portion of the time, in the house of Lewis Hatch, with him, Frank and his wife both residing there a part of the time after his marriage, and afterward having moved into what is called the "little house" a few rods distant from the house of Lewis Hatch;* so that the force of all these cases as authorities herein are greatly reinforced by this one important fact, namely, *that Lewis Hatch always resided on, and we say had personal, actual possession of* this farm.

In the case of *School District* v. *Batsche*, 106 Mich., 330 (64 N. W. Rep., 196), it appeared that Batsche occupied the lower floor of a two-story building. The building belonged to the school district, and the upper floor was used for a school room. In 1885, Batsche was employed to teach the school for seven months, and in pursuance of the contract took possession of the building and continued to teach the school throughout the term, and remained there afterward and from that time until the bringing of this suit, and remained in possession. That every year the district had contracted with him and he had taught the school. The school term ended in June, 1892, and on August 31, 1892, notice to quit was served.

> "The case turned in the court below upon the question of whether the relation of landlord and tenant existed. The Circuit Judge, being of the opinion that it did not, directed a verdict, and plaintiff brings error. Numerous questions are discussed in the brief of the complainant's counsel, but we think it cannot be fairly said that the Circuit Judge was called upon to pass upon anything more than the

simple question of whether the relation of landlord and tenant existed."

The Court, in its opinion, among other things, says:

"*It is fairly inferable that the statement made by plaintiff's counsel below that the occupation of the premises was incident to, and deemed essential for, the performance of the duties of the defendant as teacher. It was not proposed to show that there was a distinct letting of these premises occupied by defendant, or that any rent was received. It has been held that under such circumstances the occupant's possession is that of the employer, and that the relation of landlord and tenant does not exist. Rex* v. *Inhabitants of Chestnut*, 1 Barn. & Ald., 473; *State* v. *Curtis*, 4 Dev. & B., 222; Stock's case, 2 Leach, 1015; *Haywood* v. *Miller*, 3 Hill, 90; *Kerrains* v. *People*, 60 N. Y., 221. The case last cited is well reasoned, and, we think, notes the proper distinctions. It states: 'The case of *Hughes* v. *Parish of Chatham*, 5 Man. & G., 54, in which it was said: There is no inconsistency in the relation of master and servant with that of landlord and tenant. A master may pay his servant by conferring upon him an interest in real property, either in fee, for years, or at will; and if he do so the servant then becomes entitled to the legal incidents of the estate, as much so as if it were purchased for any other consideration.' *But in* the main case *the Court held that, where the occupancy of the house was for the purpose of enabling the servant the better to perform the service, the occupancy was that of the master, and not of the servant.* We think that this is the rule in a case where, as in the present, there was no letting in terms, no rent reserved *and where it is clear that the purpose of the occupancy was to enable the employe to perform the service of his employer.*"

In the case of *Kerrains* v. *People*, 60 N. Y. (15 Sickles), 221, Kerrains had been for several years in the employ of Isaac Son. He lived in a dwelling house be-

longing to a certain mill property owned by Son. In 1871 a new agreement was made by which Kerrains was to work for Son one year "if they could agree." Son was to pay him thirteen shillings per day and furnish Kerrains with a house. The latter was to work at whatever Son had for him to do, the same as he had for years before. Subsequently Son demanded of Kerrains certain service, which he refused to perform. Son discharged him, paid him up and told him to leave the premises. Kerrains refused. Son and some other persons under his direction were proceeding to remove Kerrains' furniture and belongings when an altercation arose and Son was attacked and injured by Kerrains. "The Court charged, among other things, in substance, that the person occupied the house as a servant, not as a tenant; that Son had the right to possession and to remove the person with his effects, and to employ all the necessary force for that purpose."

CHURCH, Ch. J.:

"*The principal question of law contested on the trial, and expressly argued in this court, is whether the relation of master and servant or landlord and tenant existed between the prisoner and the prosecutor, Mr. Son, in respect of the house occupied by the former.* * * * *If the relation of master and servant existed, it would follow that the legal possession of the house was in the prosecutor, and he had the right to remove the furniture and goods therein, and to employ the necessary force for that purpose.* * * * The defendant stated the contract to be that he was to work for Mr. Son for a year at thirteen shillings a day, and have the use of the house he lived in and garden for that period. There was no dispute but that the defendant was to have the house in which he then resided. It does not appear whether the wages were less by reason of furnishing the house, or whether any, or what allowance was in-

tended on that account, *nor does it distinctly appear whether a residence in that particular house was necessary to the proper discharge of the duties of the defendant. If the occupation is connected with the service, or if it is required expressly or impliedly by the employer for the necessary or better performance of the service, then it is for his benefit, and he continues in possession. Such was clearly the case in Haywood* v. *Miller, 3 Hill, 90, where a farmer hired a man and his wife to work a farm for wages.* The *occupation of a house was necessary to the performance of the service.* And *The People* v. *Annis*, 45 Barb., 304, was substantially the same. * * * The circumstance that the right of occupation terminates with the abrogation of the contract of service by consent, or by the discharge of the servant, is not decisive. The question is, what was the character of the holding under the contract? * * * *The question depends upon the nature of the holding, whether it is exclusive and independent of and in no way connected with the service, or whether it is so connected or is necessary for its performance.* And this I think is the result of all the cases.

The question has often arisen in England under the Poor Laws, to determine what occupation would confer a settlement. The courts recognize as controlling the distinction between an occupation as a tenant or as a servant. * * *

The inference from these facts is simple, if not irresistible, in the absence of any provision for an allowance of rent, that the house was intended to be occupied by an employe for the benefit of the owner in carrying on the mill. *The case thus presented is analagous to that of a person* employing a coachman or gardener and allowing or requiring him to reside in a house provided for that purpose on the premises; or a farmer *who hires a laborer for wages to work his farm and live in a house upon the same. In these cases the character of the holding is clearly indicated by the mere statement of the facts.*"

In the case of *Haywood* v. *Miller*, 3 Hill, 90, which is

cited in the foregoing opinion, it appeared: Haywood was a farmer, owning two farms several miles distant from each other, one of which was called the upper and the other the lower farm. On the 16th of March, 1839, Haywood and Miller entered into a written contract, by which Miller agreed that he and his wife would labor for Haywood one year; "he (Miller) to labor on farm, etc., and she (Miller's wife) to discharge the duties of housekeeper, etc., term of labor to commence on the 1st of April, 1839." The contract further provided that Haywood should pay Miller for the services thus to be rendered, $160. There was a dwelling house on the *lower* farm, into which Miller and his wife moved on the 1st of April, 1839, taking with them their household furniture, and commenced their labor. Haywood aided in the removal. The court below allowed parol evidence to be given on the part of Miller that the farm intended by the written contract, and on which he and his wife were to labor, was the *lower* farm.

In the course of the summer of 1839, Haywood desired Miller to perform some labor on the upper farm, which the latter declined. Differences arose between the parties, and Miller became irritated and threatened to injure some of Haywood's cattle. Haywood, becoming dissatisfied, gave Miller notice to leave his service, which Miller declining, Haywood entered the house and put Miller's furniture out of it.

The court charged the jury that neither Miller's refusal to work on the upper farm, nor his threats of injury to the defendant's property, constituted a violation of the written contract. That the lower farm being the one intended by the contract, *it created a tenancy for the*

year; and Haywood had no right to interfere with the possession of the house or remove the goods.

The court said:

> "*The contract was not in the nature of a lease.* Whether the lower farm was intended as the place of labor or not *the relation between these parties was merely that of master and servant.* True, it is assumed by the contract that the defendant below should furnish a house; and so does every master agree to furnish a house, or house room, which is the same thing, for his domestic servants. It does not follow that, when he becomes dissatisfied and gives his servant warning to depart, and the latter refuses, that the master may not turn the servant away and remove his goods. To be sure, the master does this under the peril of paying damages for a breach of the contract with his servant, if he cannot show good grounds for dismissing him. But he is not a trespasser, whether he have good cause or not. Here the labor was to be on a salary of so much for the year. Suppose the plaintiff below had refused to work and held over the year; could the defendant have distrained for rent, or sued for use and occupation? Or could the plaintiff have had ejectment for the ouster within the year? Clearly neither; and that shows there was no more a tenancy created, than there would be under any other retainer for a year's service."

In the case of *Brown* v. *Scott*, 7 Vt., 60, the opinion of the court (which sets out the facts) was as follows:

> Collamer, J.—"The first question raised in this case is, was the property so taken as to amount to a trespass? It appears that the defendant, as an officer, sold the hay on execution. This is within the the case of *Hart* v. *Hyde*, 5 Vt. Rep., 328, and must follow that decision.
>
> The principal question however, is, was this hay the property of the plaintiff, or his father? It seems that the plaintiff purchased a farm to furnish a home for an indigent father and put on tools, stock, etc.,

and suffered the father there to labor and live. It is now insisted that the father was a *tenant* to the son, and so became the owner of all the crops on the place, and that the same were subject to be taken on the father's debts. The court will be slow to give a *bona fide* support, furnished by a son to a father, such artificial names and technical character as shall in effect discourage and fustrate such praiseworthy objects. *To create a tenancy there must be some parting with the possession so as to give exclusive occupancy to the tenant, at least for the time* being. Nothing of this kind was shown in this case. The father was suffered to reside there. *Now, to hold this a tenancy, and make the crops there the property of the father, would be forcing upon the affair a character never designed by the parties, and evidently at war with the legitimate design* The true object is obvious, and the legal character should be holden by the courts to correspond, that is, the plaintiff is the owner of the farm, stock, tools and crops, and has never parted with possession. He is by his father in constructive possession at any time. This entitles him to maintain trespass. It appears the plaintiff had said, if more could be raised than was necessary for the father's support, he was willing it should go on his debts. This did not vest the title in the father, or subject it to attachment as his. It does not appear that even enough for the support was raised.

Nor do the facts offered by defendant seem to alter the case, had the proof been admitted. He offered to show that the father had sold off the crops and had purchased stock on the farm for which the son gave his note. This only tended to prove him the agent of plaintiff, not owner of the property; and had it been shown that the father had purchased the horse and given his own note, it would but have made him the owner of that horse, not of the hay. Much stress is laid by the defendant's counsel on the law of emblements. That only arises where a *tenancy* is shown, and there does not extend to grass.

This case is not to be drawn in precedent to give

protection to *fraudulent* transactions. Had any testimony been offered, tending to prove the purchase money had in whole or in part belonged to the father, or that he had been for a long time in exclusive possession, and by valuable labor added greatly to the farm and stock, and was secreting his property from his creditors, by his son's assistance, it would have deserved a different consideration and course of proceeding; but the case is destitute of all circumstances of that character."

The case of *Peters* v. *Smith*, 42 Ill., 422, was in some respects like the case at bar, and the language of the opinion (a part of which we quote) is as follows:

"Is the possession of property, for three or four years under a loan, a fraud on creditors, such as will render it liable to execution against the borrower? Or may the ownership and the *bona fides* of the transaction be shown to defeat a levy and sale? In this case no attempt, beyond the transaction itself, is made to prove it fraudulent. *It appears that defendant in execution, having failed as a merchant, in Ohio, and having surrendered his property to his creditors, came to this State and went on a farm owned by his wife, given to her by her father; that his brother purchased and placed in his hands about five hundred dollars worth of property, consisting of stock and utensils suitable for conducting a farm; that, between three and four years afterward, one of the creditors sued Wm. S. Peters on a debt contracted by him while engaged in merchandising in Ohio, recovered judgment, issued execution and had it levied on this property. It appears that defendant in execution, during the time he had it in his possession, used it and sold portions of it, as owners of such property usually do. But the neighbors seem to have known that it was claimed to belong to appellant.*

* * * * *

The rule seems to be equally well settled, that stock in the hands of an agister may be held by the

true owner, as against the creditors of even vendees of the agister. *Property hired or loaned for temporary use falls within the same rule; and no reason is perceived why a farmer may not hire or borrow stock and implements to carry on his business*, or why the wealthy may not, of their abundance, leave their property to a poor neighbor or relative, to enable them to obtain a livelihood, *without forfeiting the ownership.* To so hold would cut off all the aid that may be kindly extended by the affluent to the industrious poor, who are willing, but unable, to contribute to the production so essentially necessary to the support and well being of society. The prosperity of communities is, in this manner, advanced perhaps to an equal extent as in other cases of bailment, which is fully sanctioned and protected by the laws of all countries.

It is, however, urged that William sold a portion of the property placed in his hands, and that this is evidence of fraud. *He states in his testimony that such was the fact, but that he replaced it with other property for appellant. He, however, states that he had discretionary power in the management of the property, and acted for his brother.* This was not inconsistent with the use or reservation of the property by appellant, if made in good faith, and he states that he had no interest in, or owned any portion of, the property."

The case of *McCutcheon* v. *Crenshaw*, 40 S. C. Rep., 511 (19 S. C. Rep., 140), the facts were in many respects very similar to the case at bar.

McCutcheon, the owner of a farm, made a contract with certain persons, among whom was Adam Jefferson, which in part was as follows:

"We, the several undersigned including said Adam Jefferson), do obligate to take in charge the several plats or parcels of land to be designated by the above named J. E. McCutcheon, of the first part, and to plant, cultivate and manure such lands

according to his or his agent's directions. We are to be of good moral behavior while on the place, and see that there is no disorderly conduct on the place. We are to be respectful to the proprietor and his family and agent. We are to house in the best possible condition all the several crops raised on said lands by us severally and see that no portion thereof is removed from the place until after all advances made by him for us and the several amounts set opposite our respective names are deducted by him therefrom. In consideration of the above obligation being carried out in good faith, I, J. E. McCutcheon, do agree to give unto the several parties the entire crops raised by them after deductions of all advances made by me for them and the amounts opposite each of their respective names."

Crenshaw & Co., through levy of an agricultural claim, under the laws of South Carolina, had by E. Scott Carson, as sheriff, seized possession of a portion of the crops under an assignment from Adam Jefferson as an alleged tenant of the former. The Court, among other things, in its opinion, says:

"In the case of *Carpenter* v. *Strickland*, 20 S. C., 1, it was settled that, under our agricultural lien law, a contract to pay a farm laborer wages for his work, whether in money or a part of the crop, did not make him 'a cultivator of the soil,' in the sense of the act: that is to say, make him a tenant, with the right of exclusive possession and control within certain prescribed limits, and for a fixed period. But, on the contrary, the laborer, in such case, has no interest in the crop of the employer, which he can take into his possession or incumber, until the crop is divided, and the claims of the proprietor paid. See *Rogers* v. *Collier*, 2 Bailey, 581; *Richey* v. *Du Pre*, 20 S. C., 1; 4 Am. & Eng. Ency. Law, pp. 887, 902, where, citing our cases of *Carpenter* v. *Strickland* and *Richey* v. *Du Pre*, it is said: '*One who is hired to work land, receiving for his compensation a part of the crop* (*land*), *is*

*not a tenant. He has no estate in the land, but receives his share of its fruits as the price of his labor. The possession is still in the owner of the land. * * * the possession of the cropper being that of a servant, who gains no property in his share of the crop until the division which is made by the landlord,'* etc. It was the duty of Judge Hudson to construe the written contract between the parties, and we concur in his construction. We agree that under the contract of January 1, 1892, *Adam Jefferson was not a tenant or any part of the plantation of McCutcheon*, so as to enable him to give a binding lien in advance upon any crops he might make during the year, but a mere farm laborer working for him."

In the case of *Paige* v. *Akins*, 112 Cal., 401 (44 S. E. Rep., 666), the head note to the decision reads as follows:

"It appeared that defendant had been for several years foreman in charge of all plaintiff's lands, with authority to rent the same, and negotiate the purchase and sale of land; that in 1891, a tract of 500 acres was subdivided for purposes of sale; that prior to the subdivision, 350 acres of this tract had been leased for the planting of a crop in the winter of 1891, which would not mature till 1892, and that the tenant had summer-fallowed the same in the spring of 1891; that at defendant's suggestion, plaintiff purchased the summer fallow from the tenant; that as plaintiff's foreman, defendant had authority to cultivate lands for plaintiff's benefit; that November 21, 1891, defendant wrote plaintiff, 'There is 350 acres of summer-fallow; * * * I will need seed wheat put it in,' and again, December 1st, 'What shall I do with the summer-fallow?' that not till two months after he began seeding the land was there an intimation that defendant was putting it in on shares; that plaintiff paid for the labor employed in putting in the crop, and furnished the seed. *Held, that the evidence was insufficient to establish the relation of landlord and tenant.*"

In the case of *State* v. *Curtis*, 20 N. C., 226, which was a criminal prosecution growing out of facts in many respects similar to the case on hearing, the Court, among other things, said:

> "It is obvious, therefore, that Pope was put to lodge in the room at the mere will of his master; and that this was for the more convenient performance of the service to be rendered by him as a domestic, and for that reason only. There was no severance of this from the other parts of the premises; and we think clearly that Pope had no possession of his own, but that his possession, as servant, was just as much the possession of his master as if they had occupied separate rooms under the same roof. *Rex* v. *The Inhabitants of Cheshire*, 1 Barn. & Ald., 473; Stockles' and Edwards' case, 2 Leach C. C., 1015, and R. & R. C. C., 185. It the latter case, Lord Ellenborough remarks that a servant who lived with his family in particular rooms of his master's house, by his leave, could not maintain trespass against his employers if they entered the rooms without his consent; and he asks, 'does a gentleman, who assigns to his coachman the rooms over his stables, thereby make him a tenant?' In the same case, Mansfield, Chief Justice, uses this language, 'many servants, as, for instance, porters at park gates, have rooms assigned to them to live in; and surely, if a master choose to turn away his servant, it does not follow that he cannot evict him until the end of the year.' A very common instance of this relation in this state exists in the case of employer and overseer. *Certainly, it has never been understood among us, when a planter places an overseer on his plantation to superintend his operations and hands there, that he puts him into possession as against himself, so that he cannot turn him off during the year, but that the overseer may remain against the will of the master in possession, perhaps of the only house fit for the occupation of a second overseer or of the owner himself. On the contrary, it is clear law, and universally received, that the houses on the plantation are as*

much in the possession of the owner as the plantation itself, or the hands, provisions or horses on it, and it would work an intolerable inconvenience to employers and detriment to agriculture to hold otherwise. The redress of the overseer is by action on the contract of the employer, and not by holding over that *which was never in his possession for an instant, but as the servant and agent of his employer.* So, in the present case, Mr. Curtis never parted from or lost his possession; and consequently, the house was never in possession of Pope."

In the case of *People* v. *Annis*, 45 Barbour, 305, the Court, among other things, says:

> "The agreement is this: The defendant hired the relator to work for him one year on his farm, for the sum of $270, and was to furnish him house room for himself and family, a garden and pasture for a cow. It is very clear, I think, that this is no demise of premises in the nature of a lease, creating the relation of landlord and tenant. The relation is simply that of employer and employe, or master and servant, and the house room, garden and pasture of the cow are parts merely of the contract for service, and operate as a portion of the consideration of that agreement. No rent is reserved or intended, and there could be no such thing as a claim by the owner for use and occupation while the agreement continued in force and the parties acted under it. *It is simply the case of a hired man living with his employer, or upon his premises, as such. To call this a tenancy would be a confounding of all legal distinctions.*"

The case of *Rollins* v. *Riley* (reported in 44 New Hampshire—7 Chandler, 12) was this: A father and mother who were growing old made an instrument called a covenant, to stand seized to the use of the son, which was in part as follows: "We will henceforth stand seized of our homestead farm, containing forty acres more or less * * * with all the privileges and ap-

purtenances to the same belonging, for the uses and purposes following, that is to say: To our own use during our natural lives and the natural life of the survivor of us * * * and after our decease or the decease of the survivor of us, to the use of the said George W. Rollins (the son), his heirs, and assigns forever; provided, however, that if the said George W. Rollins shall neglect or refuse to maintain us and the survivor of us during our natural lives upon said premies, and find and furnish for us and for the survivor of us all such proper and necessary food, meat, drink, clothing and medicine, according to our degree and standing, and to maintain us and the survivor of us during our natural lives and the natural life of the survivor of us, properly and fully, upon our allowing him the use of said farm and the easterly half of the house, then this conveyance shall be void." In discussing this agreement, the Court, among other things, said:

> "But the defendant claims that the terms of the condition to the deed by which he was to be allowed the use of the farm and half the house so long as he maintained the plaintiff and his wife, made him a tenant at will or at sufferance, and that, therefore, the plaintiff cannot maintain this suit without a notice to quit, or without a re-entry by the plaintiff. But we do not so understand the contract. *It seems evident, from the whole deed, that the plaintiff intended to keep the possession in himself, and the right of possession, and that the arrangement that George W. was to be allowed to have the use of the farm and half of the house did not make him a tenant in any respect to his father, so as to give him the legal possession.* * * * When George W. failed to perform his agreement in furnishing the plaintiff with clothing, then his right to have the use of the land ceased, and after that the plaintiff, being in possession, could sue in trespass for any subsequent interference with the land or house."

The case of *Mayhew* v. *Suttle*, 82 Eng. C. L. Rep., 348, was this: A party acquired the right, under an agreement with the owner of certain premises, who was a brewer, to have the possession of the premises for the purpose of conducting a place for the sale of beer. The occupant agreed that he would purchase beer from no other party than the owner of the premises. It does not appear that he was to pay any rental for the premises, or to render any compensation for the use of the same other than was included in the purchase of the beers of the party who owned the premises, and that said agreement might be terminated at any time upon one month's notice by either party, and that thereupon the occupant should "*quit and deliver up to him, the said G. Suttle (the owner), said trade or business, and the full, quiet and peaceable possession of all and every of the said premises, together with such fixtures, goods, effects and things belonging to him, the said G. Suttle, as may then be thereon.*" The question was whether he was the tenant of the owner, or whether the relation created was that of master and servant. The court said:

> "We think, for these reasons, that the agreement in question did not create any tenancy, but that the occupation of the tenant was ancillary to the carrying on of the trade for and on account of the defendant, and that the plaintiff, therefore, had no such possession as to enable him to maintain this action (of trespass)."

In the case of *King* v. *The Inhabitants of Cheshunt*, 1 Barnewall & A., 473 (1818), it appeared that one John Blackerby, by order of two justices, was removed from a certain parish to another parish, in the County of Hertfort; that said Blackerby "was a laborer in the employ of the Board of Ordnance, in the gunpowder manufactory

at Waltham Holy Cross. After residing upwards of two years in a house in that parish at an annual rent of seven pounds, it was purchased by the board, and a part of the premises having been taken from it, he continued to live in it at a weekly rent of two shillings, which was deducted from his wages. The Board of Ordnance had several other houses in Waltham Holy Cross for their laborers, who paid rents for them, but inhabited them so long only as they continued in the employment of the board. When Blackerby was dismissed from the emplo ment, he was required to give up the keys to the house, which he at first refused to do, but after a short time gave them to the person appointed to succeed him in the house by the superintendent. During the time he so held this house at two shillings a week he also occupied, for a space of time exceeding forty days, a shop in the same parish, the shop and house together being of the annual value of ten pounds. The Court of Quarter Sessions were of opinion that the occupation of the house under the above circumstances did not operate in aid to confer a settlement within the meaning of the 13 & 14 Car. 2, c. 12.

Lord Ellenborough, Ch. J., said:

"In this case, it seems to me, that the party occupied this house as a servant only, and not in the character of a tenant. It is like the case of a coachman, who frequently occupies a room over the stables; but such occupation is not within the meaning of 13 and 14 Car. 2. (Blackerby) here was divested of the tenement as soon as his service terminated. He quitted the possession reluctantly, and was succeeded by the person who succeeded him in his employment under the Board of Ordnance. *All this clearly shows that he was entitled only to hold it during and for the more convenient performance of his service. If the court should hold, in this and similar cases, that the legal relation of landlord and tenant subsisted, it*

would become necessary to turn such persons out of possession by regular proceedings in ejectment, and every gentleman having twenty or thirty cottages in which his laborers resided would be compelled, on any change of their service, to have recourse to such means. This would be productive of the most serious inconvenience. Upon the whole view of this case, I think it plainly appears that the relation of landlord and tenant never did subsist here, and unless that were so, this was not an occupation within 13 and 14 Car. 2, and no settlement could be gained by it."

In the same case, BAYLEY, J., says:

"I am of the same opinion. The case of *The King* v. *Minster* only decided that *the occupation of a tenement, which was wholly unconnected with the service, would confer a settlement, but that the occupation of one connected with the service would not.*"

ABBOTT, J., also says:

"*Here the relation which existed was only that of master and servant, and not that of landlord and tenant.*"

In the case of *The King* v. *Stock and others* (2 Leach's Crown Law, 1015, 1809) certain parties had committed a robbery on a banking and brewery company. The bank building consisted of two stories. There were three rooms in the lower story, the first occupied for the transaction of the brewing business of the company; the next room was occupied by the banking business of the company, and the interior room was a private office. Overhead, on the second floor, were tenement rooms occupied by one Stevenson, who was an employe of the bank. There was no communication between the upper and lower stories, except through a trap-door. These tenement rooms were occupied by one Stevenson, who was a cooper employed by the company. He was paid a stated price per week, and it was further agreed that he should

have the upper rooms of this building for himself and family. On the trial of the indictment, the question was whether or not these dwelling rooms were in the possession of the banking company, so that it was the constructive dwelling of the prosecutors.

LORD ELLENBOROUGH said:

"This man Stevenson certainly could not have maintained trespass against his employers if they had entered these rooms without his consent. Does a gentleman, who assigns to his coachman the rooms over his stables, thereby make him a tenant? * * * *Stevenson was a servant, for the property in both partnerships belonged to the same persons.*"

LORD MANSFIELD, Ch. J., in the same case said:

"*The prosecutors could have turned Stevenson out of these premises whenever they pleased. He was their servant, who, like many other servants*, as, for instance, porters at park gates, had these rooms assigned to him to live in, and surely, if the master chose to turn away his servant, it does not follow that he cannot evict him until the end of the year."

The case of *Doe* v. *Derry* (9 Charrington & P., 499):

"The said N. D. agrees with the said J. F. C. to manage the farm at Bishop's Frome, now in the occupation of the said N. D., which he has this day, with the consent of the mortgagee, let to the said J. F. C. from the 25th of December, on the following terms, namely: The said N. D. is to manage and take care of the stock and crop on the said premises, and the team of horses, and do every necessary work on the said farm, and the wife of the said N. D. is to manage the dairy thereon for the said J. F. C., the said J. F. C. allowing to the said N. D. the sum of 12s. per week, and allowing him and his family to reside and have the use of the dwelling house and furniture therein, free of rent, and the said N. D. hereby agrees to the terms above mentioned, either party to put an end to this agreement on giving

three months' notice or paying or receiving three months' wages, the said N. D. to keep and render monthly to the said J. F. C. a just and true account of all articles sold and moneys received and paid by him, the said N. D., on account of the said J. F. C., relating to said farm."

PARKE, B.: "If this be a lease, the stamp is not sufficient; it should be £1 15s. But it seems to me that *this is not a lease at all*, and that this is only a means of remunerating the defendant as bailiff. The words 'allowing him and his family to reside and have the use of the dwelling house,' might import a lease; but, I think, taking the whole of the instrument together, they must be taken to be a reward for services."

1 Wharton on Ev., Sec. 357.

(c)

The ~~defendant~~ plaintiff in error requested the giving of only two instructions, which the court refused to give. One of these was so manifestly bad that no complaint is now made of the refusal. The other instruction was properly refused because there was no evidence to support it. This instruction is found on page 23 of the record, and is as follows:

"The court instructs the jury that when a man delivers personal property to another man, under a contract which provides that the person to whom such personal property is turned over is at liberty to deliver to the person so turning over said personal property, other property of like kind and equal in value, then the title to the property so delivered passes to the persons so receiving said personal property; and if the jury believe from the evidence that the petitioner, Lewis Hatch, and the judgment debtor, Frank W. Hatch, entered into a contract which, provided that the farm personalty on

> the Lewis Hatch farm should be delivered by Lewis Hatch to Frank W. Hatch, and that such contract further provided that Frank W. Hatch need not return to Lewis Hatch the same specific articles of property, but that Frank W. Hatch was at liberty under said contract to deliver to the said Lewis Hatch other personal property of like kind and equal in value to that to be delivered by the said Lewis Hatch to the said Frank W. Hatch, and you further believe from the evidence that under said contract the farm personalty on the Lewis Hatch farm was delivered by the said Lewis Hatch to the said Frank W. Hatch, and that said contract was in force between the said Lewis Hatch and the said Frank W. Hatch at the time of the levy of the execution in the case of *Joseph G. Heim, Receiver of the First National Bank of South Bend*, v. *Frank W. Hatch*, then you should find by your verdict that the property levied upon was the property of Frank W. Hatch and liable to seizure under said execution."

It will be observed that this instruction applies to a case where one man "delivers personal property to another, under a contract which provides that the person to whom such personal property is turned over is at liberty to deliver to the person so turning over said personal property or other property," etc. The evidence in this case, considered in its mere verbal form, directly contradicts the idea of their having been any property turned over to Frank W. Hatch. Lewis Hatch, in answer to a question, testified:

> "A. I did not turn over anything about it. There was not any turning over anything. He just came to manage my business. There was no 'turn over,' no accounting of stock or anything of the kind."

But aside from the mere verbal form of the evidence, the whole general import and effect of the agreement or arrangement, which appears by the uncontradicted evi-

dence to have been made between the two men, precludes the idea of there having been any turning over of this property in the sense in which the term was used in the instruction, or at least in the sense in which it must have been used in the instruction, to have made it even a correct abstract statement of a principle of law.

It will also be observed that in the instruction above quoted, not only is there no mention made of any tenancy, but the instruction is confined entirely to the personal property. This instruction could have had no application except upon the theory that there was a tenancy. It is difficult to conceive how a tenancy of this personal property could have existed without there being a tenancy of the real estate—the farm upon which the personal property was situated. Yet there is not in the evidence a particle of testimony that Lewis Hatch ever relinquished his possession of the farm, or that Frank Hatch ever acquired the right to the possession of the farm as against Lewis Hatch. The instruction was properly refused.

By way of illustration of the contention of the defendant in error that the title to this property remained in Lewis Hatch and did not pass to Frank W. Hatch—suppose the next day after this arrangement was made, in 1883, an officer with an execution against the property of Lewis Hatch had appeared upon this farm to make a levy; suppose he had seized the property then on the farm and Lewis Hatch had attempted to defend by showing that this property did not belong to him but belonged to Frank W. Hatch, as the legal effect of the arrangement appearing in the evidence. Do either this court or counsel for plaintiff in error believe that under such circumstances Frank Hatch could have replevied this stock

from the officer or that Lewis Hatch could have maintained such a defense? It appears from the evidence in the case that a portion of this property levied on by the marshal was on the farm in 1883, at and prior to the time that the arrangement was made; that the same was bought with the money of Lewis Hatch and not by Frank Hatch.

In relation to the instructions given on behalf of petitioner, of which complaint is made, nothing more need be said. Their correctness is fully established in the decisions hereinbefore cited.

(d)

In conclusion we respectfuliy submit that this record is free from error and accordingly we respectfully petition that the judgment of the lower courts be affirmed.

Respectfully submitted.

GEORGE A. DUPUY,
Attorney for Defendant in Error.

No. 183.

Office Supreme Court U. S.
FILED
MAR 14 1900
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

No. 183.

JOHN W. ARNOLD, PLAINTIFF IN ERROR,

vs.

LEWIS HATCH, DEFENDANT IN ERROR.

Now comes Lewis Hatch, defendant in error, and shows to the court that it does not anywhere appear in the record in this cause that the value of the property in controversy equals or exceeds $1,000, and defendant in error therefore moves the court to dismiss the writ of error herein for want of jurisdiction in this court to review said cause.

George A. Dupuy
Atty. for Deftin Error

Lewis Hatch, filed in the District Court for the Northern District of Illinois, in the case of *Joseph G. Heim, Receiver*, v. *Frank W. Hatch*, praying for the release by the marshal and a return to petitioner of a large amount of cattle and other farm property alleged to belong to him, and levied upon by the marshal as the property of Frank W. Hatch.

The cause originated in an action begun in the District Court for the Northern District of Illinois by Joseph G. Heim, as receiver of the First National Bank of Southbend, Washington, against Frank W. Hatch, to enforce against the defendant an individual liability as a stockholder of the bank, which had become insolvent. Defendant having made default, a judgment was rendered against him in the sum of $4351 09 and costs, for which an execution was issued and levied upon the cattle and other farm property in dispute. Whereupon Lewis Hatch, the father of Frank W. Hatch, filed this petition, to which the plaintiff in error, John W. Arnold, marshal for the Northern District of Illinois, made answer, denying the petitioner's ownership of the property, and admitting his levy upon it as the property of Frank W. Hatch.

The case came on for trial before a jury, and resulted in a verdict for the petitioner, upon which judgment was entered. On writ of error from the Circuit Court of Appeals this judgment was affirmed. 60 U. S. App. 659. Whereupon plaintiff in error, Arnold, sued out a writ of error from this court.

Mr. Kenesaw M. Landis for plaintiff in error.

Mr. George A. Dupuy for defendant in error.

Mr. Justice Brown, after making the above statement, delivered the opinion of the court.

This case presents the frequent question of the title and ownership of personal property, levied upon as the property of an execution debtor, and claimed by another party. The undisputed facts are that, in 1883, the petitioner, Lewis Hatch, who then and for about twenty-five years prior thereto, had re-

sided upon and worked a large farm in McHenry County, Illinois, made a contract with his son, Frank W. Hatch, a young man just out of school, under which it was agreed that the latter should undertake the management of the farm, farm implements and live stock, make all repairs, pay all taxes and other expenses, replace all implements as they were worn out, keep up all live stock, and have as his own the net profits. It was further stipulated that each party should be at liberty to terminate the arrangement at any time, and that the son should turn back to his father the farm with its implements, stock and other personalty, of the same kind and amount as was on the farm when the father retired, and in as good condition as when he took them.

As all questions connected with the veracity of witnesses, the *bona fides* of this arrangement, and its exact terms, are forestalled by the verdict of the jury, we are bound to consider the case as if the arrangement had been reduced to writing, and such writing were the only evidence bearing upon the subject. As the only testimony in the case was that of the father and the son, and as their statements were entirely harmonious, we are simply to inquire as to the correctness of the charge of the court to the jury, that, if they believed the arrangement was substantially such as was stated by the petitioner and his son, it did not have the effect in law to vest the title to any of the property or proceeds of the farm in Frank W. Hatch, although he may have had power to sell the same to others without any further authority from his father. There was evidence showing, not only that the son assumed the entire management of the farm, but that he was at full liberty to sell and dispose of its products, to replace old stock and implements with new, and to appropriate the net proceeds to himself; and that his only obligation was to return the property on demand, or substituted property of the same kind and amount, whenever either party should see fit to terminate the arrangement.

We do not know that it is necessary to fix an exact definition to the relations between these parties, or to determine whether the law of master and servant, landlord and tenant, or bailor and bailee, governed the transaction. The main object is to

ascertain the intent of the parties with respect to the ownership of the property. There is no doubt that the title to the farm remained in the father, who continued to occupy the homestead and provided accommodations for certain of the farm hands; that the arrangement was made with his son soon after he left school, and apparently for the purpose of starting him in business. He was then unmarried, and lived in the same house with his father, who furnished the board of the hired men until after the son was married, when, after living some time with his wife in the homestead, he built at his own expense a small house for his own use about twenty or thirty rods distant from that of his father, although some of the hired men still lodged with the latter. In 1887, the son, Frank W. Hatch, gave up the arrangement, moved with his family to Texas, and settled there with the intention of making it his home. Upon going there he left all the stock upon the farm just as he had received it from his father. He subsequently became dissatisfied, and returned to his father's farm under the same arrangement. He continued under this arrangement until 1892, when he went to the State of Washington for the purpose of locating there; invested in real estate and apparently in bank stock, in which he appears to have been unfortunate. Again returning to Illinois, he resumed the management of the farm.

It further appeared from the tax schedules of personal property in that school district that the property in question was assessed in the name of Frank W. Hatch. While this testimony was doubtless entitled to consideration, the jury evidently did not give it great weight, as it was part of the agreement between the father and son that the latter should pay the taxes.

There was also evidence that, in the spring of 1897, the son sold to his father for $1000 a quantity of wool produced on the farm; but as it was also a part of the agreement that the son should have the product of the farm, there was nothing inconsistent with it in this sale of the wool.

It is very evident from this testimony that no sale of the farm property was intended. There was no purchase price agreed upon, no time fixed for the payment; and the reservation that the arrangement might be terminated the day after it was made,

as well as that it might indefinitely continue, is wholly inconsistent with the theory of a sale. Indeed, the only *indicium* of a sale is the provision that the identical property received need not be returned, but that other property of a similar kind might be substituted. Plaintiff in error relies in this connection upon a line of cases which hold that, where a man turns over personal property to another, under an arrangement by which the latter is not obliged to restore the specific articles of property, but is at liberty to deliver other property of the same kind and value, the receiver becomes the owner of the property; as where wheat is delivered to an elevator with the understanding that the obligation to return it shall be discharged by the delivery of other like wheat, Story on Bailments, § 439; *Lonergan* v. *Stewart*, 55 Illinois, 44; *Bretz* v. *Diehl*, 117 Penn. St. 589; *Smith* v. *Clark*, 21 Wend. 83; *Johnston* v. *Browne*, 27 Iowa, 200, although even then, a usage to return substituted property may turn the transaction into a bailment. *Erwin* v. *Clark*, 13 Michigan, 10. But these authorities have no application to the case under consideration. Here there was no provision for a substituted property beyond that required by the nature of the property delivered. The arrangement was to be indefinite in its continuance. The property was mostly animals which would necessarily die, be sold or slaughtered in a few years, and a gradual substitution of their progeny or other similar cattle, and a renewal of worn out implements, was all that was contemplated. The stipulation that this might be done was a mere incident of the main agreement by which the property was to be returned in like good order and condition as received.

The son was undoubtedly entrusted with extensive powers, but no greater than the management of a large farm would necessarily require. The father had become an old man, and naturally wished to rid himself of the responsibility, even of supervision, and to put his son upon the footing of an independent farmer. It is possible that he contemplated leaving the property to his son upon his death; but it was clearly his intention to reserve the power of revoking the arrangement in case it did not prove satisfactory to him. As the father remained in possession of the farm, there was nothing in the mere fact that he

entrusted his son with the management, that was necessarily calculated to mislead creditors into the belief that the latter was the owner of the property. Apparently the receiver was unable to produce evidence manifestly inconsistent with the agreement as sworn to by both father and son, and their testimony authorized the jury to find the ownership of the property to be in the former.

Similar agreements have been sustained as against creditors in a number of cases. *Chatard* v. *O'Donovan*, 80 Indiana, 20; *Wilbur* v. *Sessin*, 53 Barb. 258; *Bowman* v. *Bradley*, 101 Penn. St. 351; *Kerrains* v. *People*, 60 N. Y. 221; *Haywood* v. *Miller*, 3 Hill, 90; *Brown* v. *Scott*, 7 Vermont, 57; *Peters* v. *Smith*, 42 Illinois, 422; *State* v. *Curtis*, 4 Dev. & Battle Law (N. C.), 222.

There was no error in the judgment of the Court of Appeals, and it is therefore

Affirmed.

ARNOLD *v.* HATCH.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 183. Argued March 14, 1900. — Decided April 9, 1900.

A farmer made an arrangement with his son under which it was agreed that the latter should undertake the management of the farm, farm implements and live stock, make all repairs, pay all taxes and other expenses, sell the products of the farm, replace all implements as they wore out, keep up all live stock, and have as his own the net profits. It was further agreed that each party should be at liberty to terminate the arrangement at any time, and that the son should return to his father the farm with its implements, stock and other personalty, of the same kind and amount as was on the farm when the father retired, and as in good condition as when he took it. *Held*, that no sale of the farm property was intended; that the title to the same remained in the father, and that the property was not subject to execution by creditors of the son.

THIS was an intervening petition by the defendant in error,